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[CASE-NOTED]

(As Amended by Bengal Act VI of 1938)

BY

KUMUDNATH BHAUMIK, B.L.

Author of *The Patni & Revenue Sale Laws, The Indian Limitation Act, The Law of Civil Appeal & Revision, Etc.*

1938

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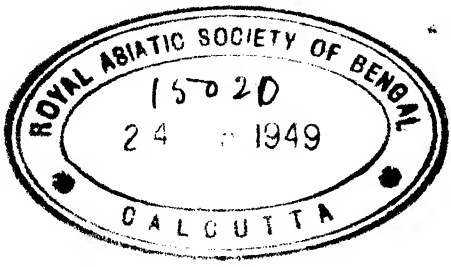

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TO

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THE GREAT SOUL OF

RAJARSHI RAI BANAMALI ROY BAHADUR

OF

TARASH, PABNA

PREFACE

We are now passing through an age of changes and reforms. The gradual changes coming upon the economic and political horizon of the country have given birth to new ideas and claims, and the old laws are no longer deemed adequate to protect the interests of the people. *The Tenancy Act of Bengal* has within the course of a few years become the *target of various attacks and the centre of speculations* and its provisions are changing every now and then with a view to improving the status and position of the *raiyats* by clothing them with certain rights which so long vested in the landlords. The right of transfer of an occupancy holding was subject to certain restrictions and to a payment of *selami* or landlord's transfer fees, except in certain cases. The Act which underwent several amendments only a few years back, has again been amended, with certain provisions thereof altogether repealed. The principal object underlying these amendments is to make the occupancy-*raiyats* blessed with an invaluable right of transfer of their holdings, unhampered by any obligations attached to it. Another great object in view of these amendments is to do away with the right of enhancing rents wherever law permitted it, by allowing a decade of years' pause in the matter.

The landlords would be the worst sufferers by these changes in the law. The right of getting *selami* on transfer of lands is not only old in this country, but this right got the sanctity and recognition of laws of the ancient days of other civilised and enlightened countries. It is rather a rupture of the landlaws of Bengal to take away this long existing right of the landlords. The landlords' transfer-fees deposited in the Collectorate were of substantial help to the landlords in these days of economic depression when the realisation of rents is awfully bad, to meet the public demands and saved many estates and *talugs* from being sold away in revenue and *putni* sales.

But not in the least would the *raiyats* suffer the results of these amendments in the long run. No doubt a right of free transfer is given by the present Amendment Act, but the more is the freedom, the more pernicious is the result. The obstacle gone, the inevitable follows. The more the absence of restrictions, the greater is the scope for inviting ruin.

Time has come for amendments and repealments of old laws. Other enactments are in force, and will be in force with still greater might, with the avowed object of improving the agriculturists of the country, but it should not be kept out of view that, so long as the law is one-sided, it cannot bring forth good and ameliorative results to the country. A Law is said to be perfect when it confers equal benefit to all the classes within its ambit. The landlaws of Bengal have always been complicated, and the present amendments cannot but increase the clash of interests running between the landlords and the tenants.

The (Amendment) Act of 1938 is in force on and from the 18th of August.

OPERATION OF THE ACT

Government Press Note:—The legal position regarding the deposit of landlord's transfer fees on presentation of a document which was executed prior to the 18th of August, 1938, for registration after the new Act (Bengal Act VI of 1938) came into force, has been examined by Government and is interpreted in a Bengal Government Press Note which says:

> "The Bengal Tenancy Ordinance, 1938, which was published in the *Calcutta Gazette Extraordinary* of June 3, 1938, provides that the period from May 31, 1938, till the date of expiry of the Ordinance is to be excluded in computing any time prescribed by law within which any document of transfer in relation to which the provisions of section 26C (2) of the Bengal Tenancy Act (requiring deposit of landlord's transfer fees on presentation of a document for registration) shall be presented for registration.
>
> It also stays the power of courts to take action for non-payment of landlord's transfer fees. That Ordinance expires on September 8, 1938.

Section 26C (2) of the Bengal Tenancy Act has been amended by the Bengal Tenancy (Amendment) Act, 1938, which came into force on August 18, 1938, so that the requirement of the law which prevented a registering office from registering a document of transfer unless the landlord's fee was deposited, is no longer in force.

LEGAL POSITION

Similarly, the provisions of section 26C (4) and section 26E (1) which required deposit of transfer fee in the case of certain court transfers are no longer in force.

It has been brought to the notice of Government that in some cases registration authorities are demanding transfer fees on documents of transfer of occupancy holdings though presented after the new Act came into force, presumably on the ground that the documents when registered will operate from the time of execution, which may be prior to August 18, 1938.

It is also reported that in certain cases of court transfers deposit of landlord's transfer fee is being required, apparently on the ground that the sales took place before the new Act came into operation and as such the provisions of the old Act should be applied.

Government have examined the legal position and are of opinion that though a transfer may operate from the date of execution of a document under section 47 of the Indian Registration Act (Act XVI of 1908), and this date may be prior to the date of the amendment of the Bengal Tenancy Act, the provisions of the law under which such payments are enforced being themselves no longer in forces, landlord's transfer fees cannot, after August 18, 1938, be demanded."

I have given in this book a Table of Amendments, Insertions, Repeals and Substitutions made by the Bengal Act VI of 1938, and the important recent case-laws gathering upon the sections, have been tersely given at their proper places. The Amendments effected by the Government of India (Adaptation of Indian Laws) Order, 1937, have been noted in the book.

In compiling this edition I got helpful suggestions from Mr. D. K. De, M.A., B.L., for which I express my hearty thanks to him.

7th September 1938.
CALCUTTA,

K. N. BHAUMIK.

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By The Bengal Act VI of 1938.

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REPEALED IN PART AND AMENDED . .	Ben Act I of 1907; E. B. & A. Act I of 1908; Act XXXVIII of 1920; Ben. Act IV of 1928; Ben. Act II of 1930; Ben. Act VI of 1938.
AMENDED	Act VIII of 1886; Ben. Act III of 1898; Ben. Act I of 1903; Ben. Act III of 1913; Ben. Act II of 1918; Ben Act III of 1919; Ben. Act X of 1923; Ben. Act I of 1925.
SUPPLEMENTED	Ben. Act III of 1895, ss. 20, 28 to 32, 36 (*c*).

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THE BENGAL TENANCY ACT, 1885.

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

Scope of the Act.—Whether B. T. Act or T. P. Act applies depends upon the nature of the original tenancy, and not upon the character of parcels included in the sub-tenancy. Simply because the lease was that of a tank it did not take it out of the province of B. T. Act.—51 C. L. J. 25.

There is much difference between B. T. Act and Rev. Sales Act, and for the construction of one Act the other cannot be referred to. Though an intermediate tenure is an incumbrance under B. T. Act it is not so under Rev. Sales Act—36 C. W. N. 29.

Whereas it is expedient to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal, it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. (*1*) This Act may be called the Bengal Tenancy Act, 1885.

Commencement.

(*2*) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, appoint in this behalf.

Local extent.

(*3*) It extends by its own operation to the whole of Bengal, except—

(*i*) Calcutta, that is to say, the area described in Schedule I to the Calcutta Municipal Act, 1923, but excluding the area added to Calcutta as defined in clause (*1*) of section 3 of that Act;

Ben. Act III of 1923.

(*ii*) (*a*) the area added to Calcutta as defined in clause (*1*) of section 3 of the Calcutta Municipal Act, 1923, or any part thereof; and

(*b*) any area or part of any area included in Calcutta by notification under sub-section (*3*) of section 543 of that Act, if such area or part is specified in a notification made in this behalf by the Local Government;

(*iii*) any area constituted a municipality under the provisions of the Bengal Municipal Act, 1884, or part thereof, if such area or part is specified in a notification made in this behalf by the Local Government:

Ben. Act III of 1884.

Provided that a notification under this clause shall be no bar to the operation of this Act in respect of agricultural lands situated within the area specified in such notification; and

(*iv*) the Scheduled Districts specified in the Part III of the First Schedule to the Scheduled District Act, 1874:

XIV of 1874.

Provided that no notification shall be issued under clause (*ii*) or clause (*iii*) of this sub-section, unless—

(*a*) it is previously published in the area concerned or part thereof in the prescribed manner; and

(*b*) *both Chambers of the Provincial Legislature* by a a resolution recommend that the notification be issued.

Note :—The words in italics in proviso (b) to sub-section (3) (iv) have been substituted for the words "the Bengal Legislative Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. (*1*) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

Repeal.

(*2*) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(*3*) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

3. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(*1*) "Agricultural year" means the Bengali year commencing on the first day of *Baisakh*:

Provided that where, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, any other year has prevailed for agricultural purposes that year shall continue to prevail for those purposes until the first day of *Baisakh* next following the date of the commencement of that Act.

(*2*) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act;

(*3*) "complete usufructuary mortgage" means a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage;

(*4*) "estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government *khas mahals* and revenue-free lands not entered in any register;

(*5*) "holding" means a parcel or parcels of land or an undivided share thereof, held by a *raiyat* or an under-*raiyat* and forming the subject of a separate tenancy,

whether the raiyat *or under*-raiyat *has held the land before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928;*

Ben. Act IV of 1928.

(*6*) "landlord" means a person immediately under whom a tenants holds, and includes the Government;

(*7*) "pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery";

(*8*) "Permanent Settlement" means the Permanent Settlement of Bengal, made in the year 1793;

(*9*) "permanent tenure" means a tenure which is heritable and which is not held for a limited time;

(*10*) "prescribed" means prescribed by rules made by the Local Government under this Act;

(*11*) "proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate;

(*12*) "registered" means registered under any Act for the time being in force for the registration of documents;

(*13*) "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant:

in sections 53 to 68, both inclusive, Chapter XIV and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent;

(*14*) "Revenue-officer," in any provision of this Act, includes any officer whom the Local Government may appoint, by name or by virtue of his office, to discharge any of the functions of a Revenue-officer under that provision;

(*15*) "signed" includes "marked," when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to;

(*16*) "succession" includes both intestate and testamentary succession;

(*17*) "tenant" means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person:

Provided that a person who, under the system generally known as *"adhi," "barga"* or *"bhag,"* cultivates the land of another person on condition of delivering a share of the produce to that person, is not a tenant, unless—

(*i*) such person has been expressly admitted to be a tenant by his landlord in any document executed by him or executed in his favour and accepted by him, or

(*ii*) he has been or is held by a Civil Court to be a tenant;

(*18*) "tenure" means the interest of a tenure-holder or an under-tenure-holder;

(*19*) "village" means the area defined, surveyed and recorded as a distinct and separate village in—

(*a*) the general land revenue survey which has been made of the Province of Bengal, or

(*b*) any survey made by the Government which has been adopted by notification in the *Calcutta* or *Eastern Bengal and Assam Gazette* or which may be adopted by notification in the *Calcutta Gazette* as

defining villages for the purposes of this clause in any specified area;

and, where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order declare to constitute a village:

Provided that, when an order has been made under section 101 directing that a survey be made and a record-of-rights prepared in respect of any local area, esate, tenure or part thereof, the Government may, by notification in the *Calcutta Gazette*, declare that in such local area, estate, tenure or part thereof "village" shall mean the area which for the purposes of such survey and record-of-rights may be adopted by the Revenue-officer with the sanction of the Board of Revenue accorded under the provisions of section 115A as the unit of survey and record.

Note :—Sec. 3, clause (19) (b) shall stand unmodified by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 3. Rent includes cess.—36 C.W.N. 72; 52 C.L.J. 120.

'Parcel' signifies land within a defined set of boundaries and cannot be taken to mean an undivided share.—A.I.R. 1929 Pat. 237.

Amended definition of holding has no retrospective effect.—33 C.W.N. 1156.

Agricultural purpose is of wider import than the term 'cultivation'.—34 C.W.N. 1063.

Proviso to S. 3 (3) relating to Barga tenant is not retrospective.—34 C.W.N. 845.

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Lease of 99 bighas of Sunderban lands conferring permanent right including right to build residential house and excavate tank was taken by a Brahmin living far away—No inference of raiyati holding.—35 C.W.N. 1143.

A limited company with limited liability carrying on business on a big scale is not a raiyat.—33 C.W.N. 930.

Holding consists of a parcel or parcels of land whether rent-free or rent-paying and forming the subject of a separate tenancy.—9 Pat. 754 (F.B.).

CHAPTER II.

CLASSES OF TENANTS.

Classes of tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants (namely):—

(*1*) tenure-holders, including under-tenure-holders,

(*2*) *raiyats,* and

(*3*) under-*raiyats,* that is to say, tenants holding whether immediately or mediately, under *raiyats;*

and the following classes of *raiyats* (namely):—

(*a*) *raiyats* holding at fixed rates, which expression means *raiyats* holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity.

(*b*) occupancy-*raiyats,* that is to say, *raiyats* having a right of occupancy in the land held by them, and

(*c*) non-occupancy-*raiyats,* that is to say, *raiyats* not having such a right of occupancy.

Meaning of "tenure-holder" and "*raiyat.*"

5. (*1*) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(*2*) *"Raiyat"* means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by servants or labourers or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(*3*) A person shall not be deemed to be a *raiyat* unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(*4*) In determining whether a tenant is a tenure-holder or a *raiyat,* the Court shall have regard to—

(*a*) local custom; and

(*b*) the purpose for which the right of tenancy was originally acquired.

(*5*) Where the area held by a tenant exceeds one hundred standard *bighas,* the tenant shall be presumed to be a tenure-holder until the contrary is shown.

S. 5.—Presumption is rebuttable by kabuliyat and entry in Record of rights.—55 C.L.J. 569.

S. 5 (2).—Although an heir of a raiyat is deemed to be a raiyat under sec. 5(2), he can be liable for rent only when there is privity of estate by succession. Such privity is established when the raiyat accepts the inheritance. Absence of possession or cultivation by himself cannot, by itself, exonerate him from liability to pay rent. But absence of possession is cogent evidence to be taken into consideration with other facts in determining whether the inheritance was accepted or not—41 C.W.N. 1154.

S. 5(2).—Lands partly growing paddy and partly growing grass—raiyat could acquire an occ. right in the whole, under sec. 5 (2) read with sec. 21 (1) of the B. T. Act.—39 C.W.N. 547.

Presumption of tenure-holder applies only when land exceeds 100 bighas.—33 C.W.N. 564.

Question whether tenure exists from before Permanent Settlement is one of fact.—34 C.W.N. 793.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

(*a*) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or

(*b*) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Limits of enhancement of rent of tenures.

7. (*1*) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(*2*) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(*3*) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than 10 *per centum* of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them and shall have regard to—

(*a*) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(*b*) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(*4*) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

S. 7.—Landlord must prove customary rate or that no customary rate prevails in the vicinity.—35 C.W.N. 12.

Fees and tolls collected from *hat* are not rents and cannot be taken to determine the amount of fair rent under sec. 7.—142 I.C. 43.

Power to order progressive enhancement.

8. If it thinks that an immediate increase of rent would produce hardship, the Court may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf.

Rent once enhanced may not be altered for fifteen years.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced and for the purposes of this section, if an order for gradual enhancement of such rent has been made by a Court in accordance with the provisions of section 8, the full rent fixed by such order shall be deemed to have come into effect from the date of such order.

Other incidents of tenures.

Permanent tenure-holder not liable to ejectment.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected:

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

Transfer and transmission of permanent tenure.

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property.

Voluntary transfer of permanent tenure.

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by a sale in execution of a decree or by summary sale under any law relating to *patni* or other tenures) can be made only by a registered instrument.

(*2*) A registering officer shall not accept for registration any instrument purporting or operating to transfer by sale, gift or usufructuary mortgage a permanent tenure in favour of any person other than the sole landlord of such tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely:—

(*a*) when rent is payable in respect of the tenure, a fee of two *per centum* on the annual rent of the tenure: provided that no such fees shall be less

than one rupee or more than one hundred rupees; and

(*b*) when rent is not payable in respect of the tenure, a fee of two rupees;

together with the prescribed cost of transmission of the landlord's fee to the landlord.

(*3*) When any such instrument is admitted to registration, the registering officer shall send to the Collector the landlord's fee, the cost necessary for the transmission of the same and the notice of the transfer in the prescribed form, and the Collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice, or his common agent, if any, in the prescribed manner.

(*4*) The landlord's fees or the prescribed cost of transmission payable under this section and under sections 13 and 15 shall be paid to the registering officer or the Court or the Collector, as the case may be, in the prescribed manner.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

13. (*1*) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, or when a mortgage of a permanent tenure, other than an usufructuary mortgage thereof, is foreclosed, the Court shall, before confirming the sale under rule 92 of Order XXI in Schedule I to the Code of Civil Procedure, 1908 or making a decree or order absolute for the foreclosure, require the purchaser or mortgagee to pay into Court the landlord's fee required by section 12 together with the prescribed cost of transmission thereof to the landlord, and such further fee for service of notice of the sale or final foreclosure on the landlord as may be prescribed.

(*2*) When the sale has been confirmed, or the decree or order absolute for the foreclosure has been made, the Court shall send to the Collector the landlord's fee, the prescribed cost of transmission of the same, and a notice of the sale or final foreclosure in the prescribed form, and the Collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice or his common agent, if any, in the prescribed manner.

Ss. 12 & 13—Release of land is not transfer.—49 C.L.J. 132.

As soon as the deed of transfer of permanent tenure is registered it is complete.—56 Cal. 180.

Landlord is not bound to recognise as tenants persons other than transferees though he gets notice of interest of such persons.—33 C.W.N. 629; 34 C.W.N. 821.

An ex. sale of a tenure will not be invalid by reason of non-payment of landlord's fee.—36 C.W.N. 922.

14. (*Transfer of permanent tenure by sale in execution of decree for rent.*) *Rep. in Western Bengal by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 2; and in Eastern Bengal by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 2.*

Succession to permanent tenure.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee required by section 12, together with the prescribed cost of transmission thereof to the landlord, and the Collector shall cause the landlord's fee to be transmitted to, and the notice to be served on, the landlord named in the notice, or his common agent, if any, in the prescribed manner.

Provided that where, at the instance of the person succeeding, mutation is made in the rent-roll of the landlord within six months of the succession, the person succeeding shall not be required to give notice under this section.

Bar to recovery of rent, pending notice of succession.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit or other proceeding any rent payable to him as the holder of the tenure, until the duties imposed upon him by section 15 have been performed.

Interpretation.

16A. In sections 13, 15 and 16 the words "person succeeding", "transferee", "purchaser", "mortgagee", and "person becoming entitled to a permanent tenure by succession", include the successors in intrest of such persons but do not include the landlord *where he is the sole landlord.*

Ss. 15 & 16—S. 16 is to be strictly construed. It does not apply where claim is based on different rights other than on succession.—35 C.W.N. 1260.

Transfer and succession to share in permanent tenure.

17. Subject to the provisions of section 88, sections 12 to 16A shall apply to the transfer of, or succession to, a share in a permanent tenure.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

Incidents of holding at fixed rates.

18. (*1*) A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holding of a permanent tenure;

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;

(*c*) shall be deemed to be a settled *raiyat* of the village if he complies with the conditions set forth in section 20; and

(*d*) shall be entitled—

(*i*) to plant,

(*ii*) to enjoy the flowers, fruits and other products of,

(*iii*) to fell, and

(*iv*) to utilize or dispose of the timber of,

any tree on the land comprised in his holding.

(*2*) The provisions of sections 23A to 38 (both inclusive) shall not apply to *raiyats* holding at fixed rates, even though such *raiyats* have a right of occupancy in the lands of their holdings.

CHAPTER IVA.

PROVISIONS AS TO TRANSFERS OF TENURES AND HOLDINGS AND LANDLORD'S FEES.

Saving as to statements in instruments of transfer where landlord is not a party.

18A. Notwithstanding anything contained in section 13 of the Indian Evidence Act, nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount or fixity of rent, the area, the transferability or any incident of any tenure or holding referred to in such instrument.

Saving as to acceptance of landlord's fees.

18B. The acceptance by a landlord of the landlord's fee payable under Chapter III or Chapter IV in respect of any tenure or holding shall not operate—

(*a*) as an admission of the permanence, the amount or fixity of rent, the area, the transferability or any incident of such tenure or holding, or

(*b*) as an express consent under section 88 to the division of such tenure or holding, or to the distribution of the rent payable in respect thereof.

Forfeiture of unclaimed landlord's fees.

18C. All landlord's fees and landlord's transfer fees deposited with the Collector before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928, under Chapter III, IV or V and all fees deposited with the Collector under sub-section 48H shall, unless accepted or claimed by the landlord within five years from the date of service of notice, be forfeited to the Government.

Note :—The words after "the Government" have been omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

Continuance of existing occupancy-rights.

19. (*1*) Every *raiyat* who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when that Act comes into force, have a right of occupancy in that land.

(*2*) The exclusion from the operation of this Act, by a notification under clause (*ii*), or clause (*iii*) of sub-section (*3*) of section 1, of any area or part of any area referred to in those clauses shall not affect any right, obligation, or liability, previously acquired, incurred or accrued, in reference to such area or part thereof.

Definition of "settled *raiyat*."

20. (*1*) Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a *raiyat* land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled *raiyat* of that village.

(*1A*) A person shall be deemed, for the purposes of this section, to have continuously held land in a village, notwithstanding that such village was defined, surveyed and recorded as, or declared to constitute a village at a date subsequent to the commencement of the said period of twelve years.

S. 20 (1) (A)—is not retrospective.—37 C.W.N. 86; 35 C.W.N. 125.

(*2*) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding with the particular land held by him has been different at different times.

(*3*) A person shall be deemed, for the purposes of this section, to have held as a *raiyat* any land held as a *raiyat* by a person whose heir he is.

(*4*) Land held by two or more co-sharers as a *raiyati* holding shall be deemed, for the purposes of this section, to have been held as a *raiyat* by each such co-sharer.

(*5*) A person shall continue to be a settled *raiyat* of a village as long as he holds any land as a *raiyat* in that village and for one year thereafter.

(*6*) If a *raiyat* recovers possession of land under section 87, he shall be deemed to have continued to be a settled *raiyat* notwithstanding his having been out of possession more than a year.

(*7*) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a *raiyat,* it shall, as between him and the landlord under whom he holds the land, be presumed, for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a *raiyat*.

S. 20 (5).—When re-settlement is made by the auction-purchaser to the old tenant, the latter loses his old status of a settled raiyat.—120 I.C. 477.

Settled *raiyats* to have occupancy-rights.

21. (*1*) Every person who is a settled *raiyat* of a village within the meaning of section 20, shall have a right of occupancy in all land for the time being held by him as a *raiyat* in that village.

(*2*) Every person who, being a settled *raiyat* of a village within the meaning of section 20, held land as a *raiyat* in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

Effect of acquisition of occupancy-right by landlord.

22. (*1*) When the immediate landlord of an occupancy holding is a proprietor or permanent tenure-holder and the entire interests of the landlord and the *raiyat* in the holding become united in the same person by transfer, succession or in any other way whatsoever, such person shall have no right to hold the land as a *raiyat*, but shall hold it as a proprietor or a permanent tenure-holder, as the case may be, but nothing in this sub-section shall prejudicially affect the rights of any third person.

(*2*) Nothing in this section shall prevent the acquisition by transfer, succession or in any other way whatsoever, of the holding of an occupancy-*raiyat* or share or portion thereof, together with the occupancy rights therein by a person who is, or becomes, jointly interested in the lands as a proprietor or a permanent tenure-holder:

Provided that a co-sharer landlord who purchases a holding of a *raiyat* at a sale in execution of a rent decree or of a certificate under this Act shall not hold the land comprised in such holding as a *raiyat* but shall hold the land as a proprietor or tenure-holder, as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same. The rent payable by the *raiyat* to the other co-sharer landlords at the time of the transfer shall be regarded as the fair and equitable sum until otherwise determined in accordance with the principles of this Act regulating the enhancement or reduction of the rents of occupancy-*raiyats*.

(*3*) A person holding land as a temporary tenure-holder or farmer of rents shall not, while so holding, acquire a right to hold as a *raiyat* any land comprised in his temporary tenure or farm.

Explanation.—A person having a right to hold the lands of an occupancy holding as a *raiyat* does not lose it by subsequently holding the land as a temporary tenure-holder or farmer of rents.

S. 22.—A co-sharer landlord may have certain lands in his exclusive possession, but he is, in the absence of acquiescence, entitled to joint possession of a non-transferable occupancy holding with a person who took possession by purchase from the former tenant and then became entitled to a fractional share of superior interest.—37 C.W.N. 256.

Effect of S. 22 of B. T. Act (as it stood after amendment by E. B. & Assam Tenancy Act, 1908) is that when the superior landlord purchases an occupancy holding under him, the holding itself disappears. Consequently, the status of an under-raiyat holding under the occupancy raiyat is raised to that of a raiyat.—38 C.W.N. 976.

S. 22 applies to the case of a succession by the law of inheritance to a non-transferable occupancy holding.—42 C.W.N. 495.

S. 22 (2).—Purchase of a raiyati holding by co-sharer landlord extinguished occupancy right therein but not the holding itself.—34 C.W.N. 51.

Incidents of occupancy-right.

Rights of *raiyat* in respect of use of land.

23. When a *raiyat* has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy.

Note :—The words "but shall not be entitled to cut down trees in contravention of anq local custom" at the end of the section have been omitted by the B. T. (Amendment) Act of 1928.

S. 23.—Purchaser of non-transferable occupany holding is liable to be ejected by a co-sharer landlord who becomes sole landlord by partition under Bengal Estates Partition Act.—35 C.W.N. 109.

Falkar on trees existing at inception of tenancy of occupancy holding, if abwab.—41 C.W.N. 88.

Where a sub-lessee under an occupancy raiyat has raised structures on the land of the tenancy which was for horticultural purposes, but in a suit against the raiyat and the sub-lessee, the landlord's right to question the construction of the structure has been held to be barred by limitation, reconstruction of the structure by a transferee from the tenant after the original has been partially burnt down is protected by the previous decree when no fresh use of the land for horticultural purpose has intervened.—42 C.W.N. 758.

Rights of occupancy *raiyat* and landlord in trees.

23A. Subject to the provisions of section 23, when a *raiyat* has a right of occupancy in respect of any land, he shall be entitled—

(*i*) to plant,
(*ii*) to enjoy the flowers, fruits and other products of,
(*iii*) to fell, and
(*iv*) to utilize or dispose of the timber of,

any tree on such land.

Obligation of *raiyat* to pay rent.

24. An occupancy-*raiyat* shall pay rent for his holding at fair and equitable rates.

S. 24.—Rent claimed at rates agreed upon by all *utbandi* tenants—In appeal a decree for fair and equitable rent under S. 24 cannot be claimed.—50 C.L.J. 294.

Where no rent is fixed Plaintiff can get declaration of fair and equitable rent—By way of back rent he can get damages for use and occupation.—117 I.C. 45.

Right of a non-transferable occupancy raiyat is immovable property and can be bequeathed by Will.—34 C.W.N. 1146.

25. An occupancy-*raiyat* shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

Protection from eviction except on specified grounds.

(*a*) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

S. 25.—An occupancy holding can be validly bequeather by Will by an occupancy raiyat.—38 C.W.N. 96.

26. If a *raiyat* dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property: provided that in any case in which under the law of inheritance to which the *raiyat* is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

Devolution of occupancy-right on death.

26A. [Repealed by Bengal Act VI of 1938.]

26B. The holding of an occupancy-*raiyat* or a share or a portion thereof, together with the right of occupancy therein, shall, subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as other immovable property.

Holdings of occupancy-*raiyats* with occupancy-rights transferable.

26C. (*1*) Every transfer shall be made by registered instrument, except in the cases of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913; *and* a registering officer shall not accept for registration any such instrument unless the sale price, or where there is no sale price, the value of the holding or portion or share thereof transferred, is stated therein, and unless it is accompanied by

Manner of transfer and notices to landlord and co-sharers.

Ben. Act III of 1913.

(*i*) a notice giving particulars of the transfer in the prescribed form, *together with* the process fee prescribed for the service thereof on the landlord or landlords or their common agent, if any, *who is or are not party or parties to the transfer, and*

(*ii*) *such notices and process fees as may be required by sub-section (4).*

(2) In the case of a bequest of such a holding or portion or share thereof, no Court shall grant probate or letters of administration until the applicant files a notice and deposits a process fee similar to those referred to in clause (i) of sub-section (1).

(3) A Court or Revenue-officer shall not confirm the sale of such a holding or portion or share thereof put to sale in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, and no Court shall make a decree or order absolute for foreclosure of a mortgage of such a holding or portion or share thereof, until the purchaser or the mortgagee, as the case may be, files a notice or notices and deposits a process fee or fees similar to those referred to in sub-section (1).

(4) If the transfer of a portion or share of such a holding be one to which the provisions of sub-section (1) of section 26F apply, there shall be filed notices giving particulars of the transfer in the prescribed form together with process fees prescribed for the service thereof on all the co-sharer tenants of the said holding who are not parties to the transfer.

(5) The Court, Revenue officer or registering officer, as the case may be, shall serve the notices provided in this section by registered post, and after receipt of such notice, the landlord or landlord's agent, as the case may be, shall not refuse to recognise the transferee as the tenant in respect of the holding or portion or share thereof transferred nor omit to enter the transferee's name in the landlord's rent-roll in place of that of the transferor or where only a share or a portion of the transferor's interest has been transferred, along with the name of the transferor:

Provided that such recognition shall not operate as an admission of the amount of rent or the area or any incident of such occupancy holding other than the existence of a right of occupancy therein or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof:

Provided further that if a transfer is subsequently set aside or modified by a competent authority, the party in whose favour

such order has been made shall, unless such order has been passed in a suit, appeal or other proceedings to which the landlord was a party, deposit with the authority before whom the appropriate suit or proceeding was first initiated the prescribed fee for a notice on the landlord or his common agent, if any, describing the modifications made by such order, on receipt of which notice the landlord shall cause his rent-roll to be corrected accordingly.

(*6*) *In this section—*

(*a*) *'transferee,' 'purchaser' and 'mortgagee' include their successors in interest,*

(*b*) *'transfer' does not include partition or a lease, or, until a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale, and*

(*c*) *'transferor' includes a person whose interest in a holding or portion or share thereof has terminated in the circumstances mentioned in sub-section* (*2*) *or sub-section* (*3*).

26D. [Repealed by Bengal Act VI of 1938.]

26E. [Repealed by Bengal Act VI of 1938.]

Power of immediate landlord to purchase.

26F. (*1*) Except in the case of a transfer—

(*a*) to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, or

(*b*) *a transfer by exchange, lease, or partition, or*

(*c*) *a transfer by bequest, or gift* (*including* heba *but excluding* heba-bil-ewaz *for any pecuniary consideration*) *in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three degrees of the testator or donor, or*

(*d*) *a* wakf *in accordance with the provisions of the Muhammadan Law, or*

(*e*) *a dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual—*

one or more co-sharer tenants of the holding, a portion or share of which is transferred, may within four months of the service of the notice under section 26C, apply to to the Court for the said portion or share to be transferred to himself or themselves.

Explanation.—*A relation by consanguinity shall, for the purposes of this section, include a son adopted under the Hindu Law.*

(*2*) The application shall be dismissed unless *the applicant or applicants* at the time of making it, deposit in Court the amount of the consideration money or the value of the *transferred portion or share of the holding, as stated in the said notice,* together with compensation at the rate of ten *per centum* of such amount.

(*3*) If such deposit is made, the Court shall give notice to the transferee to appear within such period as *it* may fix and to state what other sums he has paid in respect of rent or in annulling incumbrances on the property *since the date of the transfer.* The Court shall then direct the applicants [*including any person whose application under sub-section* (*4*) *has been granted*] to deposit within such period as the Court thinks reasonable, such amount as the transferee has paid on *such* account, together with interest at the rate of *six and a quarter per centum per annum* with effect from the date *on which the transferee made such payments.*

(*4*)(*a*) *When an application has been made under sub-section* (*1*), *any of the remaining co-sharer tenants, including the transferee, if one of them, may within the period referred to in that sub-section or within one month of the date of the application, whichever is later, apply to join in the said application; any co-sharer tenant* who has not applied under *either* sub-section (*1*) or *this sub-section* shall not have any further power of purchase under this section.

(*b*) *Such application to join as a co-applicant shall be dismissed unless within such period as the Court may fix, not extending beyond the period referred to in clause* (*a*), *the applicant deposits in Court for payment to the applicant or applicants under sub-section* (*1*), *such sum as the Court shall determine as the share to be paid by him for the purposes of sub-section* (*2*). *If such deposit is made, the Court shall grant the application to join, and thereafter such applicant shall be deemed to be an applicant under sub-section* (*1*).

(*5*) *The Court shall thereafter make an order allowing the applications under sub-section (1) of such applicants [whether they applied under sub-section (1) or sub-section (4)] who have made the deposits required by this section and directing that the deposits made under sub-section (2) and (3) shall be paid to the transferee or to such other persons as the Court thinks equitable.*

(*6*) *In making an order under sub-section (5) in favour of more than one co-sharer tenant, the Court may apportion the property comprised in the portion or share transferred among the applicants in such manner as it deems equitable after taking existing possession into consideration; the Court shall so apportion the said property or portion thereof on the request of any applicant, and in this case may require the applicant who makes such request to make, within such period as the Court may fix, such further deposit as the Court considers necessary for equitable distribution among the remaining applicants:*

Provided that no apportionment ordered under this sub-section shall operate as a division of the holding.

(*7*) From the date of the making of the order under sub-section (*5*)—

(*a*) the right, title, and interest in the portion or share of the holding, accruing to the transferee from the transfer shall, subject to the provisions of section 22 *and to any orders passed under sub-section (6)*, be deemed to have vested, *jointly and free from all incumbrances which have been annulled or created after the date of the transfer, in the co-sharer tenants, whose applications to purchase have been allowed under this section,*

(*b*) the liability of the transferee for the rent due from him on account of the *transfer* shall cease, and

(*c*) the Court on further application of such *applicant or applicants* may place him *or them, as the case may be, in possession of the property vested in them.*

(*8*) When a transferee is divested of his right, title and interest under the provisions of sub-section (*7*), he shall for the purposes of clauses (*a*), (*c*) and (*d*) of section 156 be deemed to be a *raiyat* ejected from his holding by proceedings for his ejectment commencing on the date on which the *application under sub-section (1) was made.*

(*9*) Nothing in this section shall take away the right of pre-emption conferred on any person by Muhammadan Law.

(*10*) *An appeal shall lie to the ordiniary Civil Appellate Court from any order of a Court under this section.*

(*11*) *In this section 'transfer' does not include simple or usufructuary mortgage or mortgage by conditional sale until a decree or order absolute for foreclosure is made.*

Limitation on martgage by occupancy-*raiyat*.

26G. (*1*) An occupancy-raiyat may enter into a complete usufructuary mortgage in respect of his holding or of a portion or share thereof for any period which does not and cannot, in any possible event, by any agreement, express or implied, exceed fifteen years, *and notwithstanding anything contained in this Act or in any other law or in contract, no other form of usufructuary mortgage so entered into after the commencement of the Bengal Tenancy* (*Amendment*) *Act, 1928, shall have any force or effect.*

(*1a*) *Notwithstanding anything contained in this Act or in any other law or in any contract, every usufructuary mortgage subsisting on or after the first day of August 1937, which was so entered into before the commencement of the Bengal Tenancy* (*Amendment*) *Act, 1928, shall be deemed to have taken effect as a complete usufrauctary mortgage for the period mentioned in the instrument or for fifteen years, whichever is less.*

(*2*) Notwithstanding any contract to the contrary *entered into before or after the commencement of the Bengal Tenancy* (*Amendment*) *Act, 1928, such a complete usufructary mortgage, or a mortgage referred to in sub-section* (*1a*), may be redeemed at any time before the expiry of the *periods referred in sub-section* (*1*) *or sub-section* (*1a*).

(*3*) Every such *complete usufructuary mortgage entered into after the commencement of the Bengal Tenancy* (*Amendment*) *Act, 1928,* shall be registered under the Indian Registration Act, 1908.

(*4*) Notwithstanding anything contained elsewhere in this Act or in any other law, no document creating or purporting to create:

(*a*) a complete usufructuary mortgage of the holding or of a portion or share of the holding of an occupancy-raiyat for a period exceeding or which can exceed fifteen years, or

(*b*) an usufructuary mortgage of such holding, portion or share, other than a complete usufructuary mortgage,

shall be admitted to registration, nor shall any such document be received in evidence or acted on in any Court or by any public servant.

Provided that such a document executed before the commencement of the Bengal Tenancy (Amendment) Act, 1928, may be so received in evidence or so acted upon as a complete usufructuary mortgage for the period mentioned therein or for fifteen years, whichever is less.

(5) *Notwithstanding anything contained in this Act or in any other law or in any contract, the consideration (with all interest thereon) for a complete usufructuary mortgage or for another form of usufructuary mortgage deemed under sub-section (1a) to have taken effect as a complete usufructuary mortgage, entered into by an occupancy-*raiyat *in respect of his holding or a portion or share thereof, shall be deemed to have been extinguished on the expiry of the period (a) mentioned in the instrument of the mortgage, or (b) of fifteen years, whichever is less, from the date of the registration of the instrument, or where there is no resigtered instrument, from the date of the mortgagee's entry into possession, and the mortgagor shall thereupon become entitled to possession of the mortgaged holding, and he may, if he is not forthwith given possession, apply to the Court or to a Revenue-officer to be restored thereto:*

Provided that, if in the case of such a mortgage subsisting on or after the first day of August 1937, the said period has, on the date of the commencement of the Bengal Tenancy (Amendment) Act, 1938, already expired, the mortgagor shall, immediately on the commencement of the said Act, become entitled to possession of the mortgaged holding, but he shall not be entitled to, nor shall the mortgagee be liable for, any compensation in respect of the mortgagee's possession from the date of the expiry of the said period to the date of the commencement of the said Act.

(6) *An application under sub-section (5) shall be accompanied by a process fee of the prescribed amount for service of notice on the mortgagee, and the Court or Revenue-Officer to whom such an application is made, may, after service of such notice, award to the mortgagor such compensation as appears equitable in respect of the period during which the mortgagee retained possession after the date on which the mortgagor became entitled to be restored to possession and may pass an order restoring the possession of the land mortgaged to the mortgagor and such order shall have the effect of a decree of a civil court.*

26H. [Repealed by Bengal Act VI of 1938.]

26I. [Repealed by Bengal Act VI of 1938.]

26J. [Repealed by Bengal Act VI of 1938.]

Enhancement of rent.

27. *The rent for the time being payable by an occupancy-*raiyat *shall be presumed to be fair and equitable until the contrary is proved.*

Presumption as to fair and equitable rent.

S. 27.—S. 27 merely determines the question of burden of proof. All that it says is that the Court should not throw upon the tenant the onus of proving that the rent payable by him for the time being is fair and equitable.—A.I.R. 1932 Pat. 203.

28. Where an occupancy-*raiyat* pays his rent in money, his rent shall not be enhanced except as provided by this Act.

Restriction on enhancement of money-rents.

S. 28.—Enhancement means enhancement of the same kind of rent.—*Hassan Kuli Khan* v. *Nakcchedi Nonia*, 33 Cal. 200; *Govin Mandar* v. *Banarsi Prasad*, 18 C. L.J. 74. This section applies even when a money-rent is enhanced by the addition of a rent in kind.—*Kishori Mohan* v. *Shaik Uzir*, 37 Cal. 610: 14 C.W.N. 693. This section deals with enhancement of money-rent and not of rent in kind.—*Fazl Imâm* v. *Sukor Mahton*, 19 C.L.J. 333.

29. The money rent of an occupancy-*raiyat* may be enhanced by contract, subject to the following conditions:—

Enhancement of rent by contract.

(*a*) the contract must be in writing and registered;

(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the *raiyat;*

(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract:

Provided as follows—

(*i*) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(*ii*) Nothing in clause (*b*) shall apply to a contract by which a *raiyat* binds himself to pay an enhanced

rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of , his landlord, and to the benefit of which the *raiyat* is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and except when the *raiyat* is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(*iii*) When a *raiyat* has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the *raiyat* from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

S. 29.—Where a compromise by which the tenant bound himself to deliver so much wood in addition to the rent is embodied in a decree and has merged in a decree, it operates as an estoppel by judgment.—59 Cal. 513.

Contract for enhancement—enforcement after acquisition of occupancy rights.—60 Cal. 975; 37 C.W.N. 720.

Compromise decree passed in contravention of sec. 29 cannot be treated as without jurisdiction and a nullity.—A.I.R. 1933 Cal. 66.

Surrender by defaulting tenant and rent of the part not surrendered, if to be proportionate to that of old holding.—16 P.L.T. 800, A.I.R. 1935 Pat. 358.

Tenants executed a kabuliyat agreeing to pay enhanced rent by more than two annas in a rupee and the status of the tenants was changed from ordinary tenants to raiyats with permanent tenancy holding at fixed rent. It was held that such agreement did not contravene sec. 29.—A.I.R. 1935 Pat. 453.

Landlord must prove excess of area in order to claim enhancement by more than two annas in the rupee.—57 C.L.J. 470.

30. The landlord of a holding held at a money-rent by an occupancy-*raiyat* may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds (namely):—

Enhancement of rent by suit.

(*a*) that the rate of rent paid by the *raiyat* is below the prevailing rate paid by occupancy-*raiyats* for land of a similar description and with similar advantages in the same village or in neighbouring villages, and that there is no sufficient reason for his holding at so low a rate;

(*b*) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;

(*c*) that the productive powers of the land held by the *raiyat* have been increased by an improvement effected by, or wholly or partly at the expense of, the landlord during the currency of the present rent; and

(*d*) that the productive powers of the land held by the *raiyat* have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

S. 30.—Omission to do irrigation works by landlord—landlord cannot claim enhancement of rent.—14 P.L.T. 601: A.I.R. 1933 Pat. 645.

Where Revenue Officer is invited to settle fair and equitable rent, he is to apply the provisions of the sections to the entire holding.—35 C.W.N. 212.

Meaning of prevailing.—The words "prevailing rate" has a definite meaning. It is not average rent, nor fair rent. Primarily it means the customary rate of the locality, the rate at which lands in the locality are usually let out or at which persons desirious of taking settlement of lands can get the same. But in view of the circumstances that, in most parts of Bengal, as a result of the economic theory of rent being put to in practice there is found diversity in place of uniformity.—40 C.W.N. 121: 62 C.L.J. 342.

A landlord has the right to enhance rent unless he has expressly given up his right to enhance by contract. A lease which is not from generation to generation and which provides for the payment by the tenant of the rent which would be settled after executing a fresh *kabuliyat* at the end of the survey does not create a *mokurary* tenancy on a rent fixed in perpetuity.—39 C.W.N. 1244.

Evidence necessary in apportionment of rent.—11 Pat. 557.

Enhancement with respect to portion not deteriorated.—A.I.R. 1934 Pat. 473.

Rules as to enhancement on ground of prevailing rate.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

(*a*) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the *raiyat* and the prevailing rate found by the Court;

(*b*) If in the opinion of the Court the prevailing rate of rent cannot be saitisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Order XXVI in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908, by such Revenue-officer as the Local Government may authorize in that behalf by rules made under rule 9 in Order XXVI in Schedule I to the said Code;

Act V of 1908.

(*c*) in determining under this section the rate of rent payable by a *raiyat*, his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of *raiyats* hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;

(*d*) in ascertaining the prevailing rate of rent the amount of any enhancement authorised on account of a landlord's improvement shall not be taken into consideration;

(*e*) if a favourable rate has been determined under clause (*c*) for any description of *raiyats*, such rate may, if the Court thinks fit, be left out of consideration in ascertaining the prevailing rate;

(*f*) if the holding is held at a lump rental the determination of the rent to be paid may be made by ascertaining the different classes of land comprised within the holding, and applying to the area of each class the prevailing rate paid on that class within the village or neighbouring villages.

31A. (*1*) In any district or part of a district to which this sub-section is extended by the Local Government by notification in the *Calcutta Gazette*, whenever the prevailing rate for any class of land is to be ascertained under section 30, clause (*a*), by an examination of the rates at which lands of a similar description and with similar advantages are held within any village or villages, the highest of such rates at which, and at rates higher than which, the larger portion of those lands is held may be taken to be the prevailing rate.

What may be taken in certain districts to be the "prevailing rate."

Illustrations.

(*a*) The rates at which land of a similar description and with similar advantages is held in a village are as follows:—

Bighas.		Rs.	A.	P.
100	at	1	0	0
200	„	1	8	0
150	„	1	12	0
100	„	2	0	0
150	„	2	4	0
Total 700				

Then Rs. 2-4 is not the prevailing rate, because only 150 *bighas*, or less than half, are held at that rate. Rs. 2 is not the prevailing rate, because 250 *bighas*, or less than half, are held at that or a higher rate. Re. 1-12 is the prevailing rate, because 400 *bighas*, or more than half, are held either at this or a higher rate, and this is the highest rate at which, and at rates higher than which more than half the land is held.

(*b*) The rates at which land of a similar description and with similar advantages is held in a village are as follows:—

Bighas.		Rs.	A.	P.
100	at	1	0	0
250	„	1	4	0
150	„	1	8	0
150	„	1	12	0
50	„	2	0	0
Total 700				

Then for the reasons given in Illustration (*a*), neither Rs. 2 nor Re. 1-12 is the prevailing rate, nor is Re. 1-8 the prevailing rate, because only 350 *bighas* (exactly half) are held at Re. 1-8 or at rates higher than Re. 1-8. In this case Re. 1-4 is the prevailing rate, because more than half the lands are held at Re. 1-4 or higher rates and this is the highest rate at which, and at rates higher than which, more than half the land is held.

(*2*) The Local Government may, by a like notification, withdraw sub-section (*1*) from any district or part of a district to which it has been extended as aforesaid.

S. 31A.—The principle of S. 31A cannot be applied to an area in respect of which the provision has not been notified.—11 Pat. 557.

Mode of computation of rise in prices of decennial periods.—14 Pat. 720.

Limit of enhancement of prevailing rate.

31B. When the prevailing rate has once been determined by a Revenue-officer under Chapter X or by a Civil Court in any suit under this Act, it shall not be liable to enhancement save on the ground and to the extent specified in section 30, clause (*b*) and section 32.

Rules as to enhancement on ground of rise in prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

(*a*) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other deceniial period as it may appear equitable and practicable to take for comparison;

(*b*) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison; provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(*c*) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (*a*) the Court may, in its discretion, substitute any shorter periods therefor.

Rules as to enhancement on ground of landlord's improvement.

33. (*1*) Where an enhancement is claimed on the ground of a landlord's improvement—

(*a*) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;

(*b*) in determining the amount of enhancement the Court shall have regard to—

(*i*) the increase in the productive powers of the land caused or likely to be caused by the improvement,

(*ii*) the cost of the improvement,

(*iii*) the cost of the cultivation required for utilizing the improvement, and

(*iv*) the existing rent and the ability of the land to bear a higher rent.

(*2*) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(*a*) the Court shall not take into account any increase which is merely temporary or casual;

(*b*) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

Enhancement by suit to be fair and equitable.

35. Notwithstanding anything in sections 30 to 34, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

S. 35.—Reduction of rent is to be allowed if permanent deterioration.—124 I.C. 87.

Facts and circumstances of each case must be taken into consideration in determining limit of enhancement.—56 C.L.J. 279.

Court's discretion is very wide.—the present economic depression must be taken into consideration.—11 Pat. 654 (F.B.).

Power to order progressive enhancement.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree to its full extent will be attended with hardship to the *raiyat,* it may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf. For the purposes of section 37, however, the full rent shall be deemed to have come into force from the date of the decree.

Limitation of right to bring successive enhancement suits.

37. (*1*) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(*2*) Nothing in this section shall affect the provisions of rule 1 of Order XXIII in Schedule I to the Code of Civil Procedure, 1908.

S. 37.—Abwab is an illegal enhancement.—A.I.R. 1929 Pat. 661.

Reduction of rent.

Reduction of rent.

38. (*1*) An occupancy-*raiyat* may institute a suit for the reduction of his rent on one or more of the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise (namely) :—

(*a*) on the ground that the soil of the holding has without the fault of the *raiyat* become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual,

(*b*) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rate, or

(*c*) on the ground that the landlord has refused or neglected to carry out the arrangements, in respect of the irrigation or the maintenance of embankments which were in force at the time when the rent was settled, and the soil of the holding has thereby deteriorated.

Explanation.—A suit for reduction of rent properly framed for the purpose may be instituted or a plea for reduction of rent taken by any one among a number of co-sharer tenants of a holding.

(*2*) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

S. 38.—Deterioration is deemed permanent though it may be removable by skill and money.—124 I.C. 89.

Price-lists.

Price-lists of staple food-crops.

39. (*1*) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(*2*) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(*3*) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(*4*) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(*5*) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(*6*) In any proceedings under this Chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct unless and until it is proved that they are incorrect.

(*7*) The Local Government shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

40. [*Commutation of rent payable in kind.*] *Rep. by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 28.*

40A. [*Period for which commuted rents are to remain unaltered.*] *Rep. by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 29.*

CHAPTER VI.

NON-OCCUPANCY-*raiyats*.

Application of Chapter.

41. This Chapter shall apply to *raiyats* not having a right of occupancy, who are in this Act referred to as non-occupancy-*raiyats*.

Initial rent of non-occupancy *raiyat*.

42. When a non-occupancy-*raiyat* is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Conditions of enhancement of rent.

43. The rent of a non-occupancy-*raiyat* shall not be enhanced except by registered agreement or by agreement under section 46:

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

Grounds on which non-occupancy-*raiyat* may be ejected.

44. A non-occupancy-*raiyat* shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely):—

(*a*) on the ground that he has failed to pay an arrear of rent;

(*b*) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;

(*c*) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;

(*d*) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

45. (*Conditions of ejectment on ground of expiration of lease.*) *Rep. in Western Bengal by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), s. 2, and in Eastern Bengal*

by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), s. 2.

46. (*1*) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-*raiyat* unless the landlord has tendered to the *raiyat* a draft of an agreement to pay the enhanced rent, and the *raiyat* has within three months before the institution of the suit refused to execute the agreement.

Conditions of ejectment on ground of refusal to agree to enhancement.

(*2*) A landlord desiring to tender a draft of an agreement to a *raiyat* under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the *raiyat*. The Court or officer shall forthwith cause it to be served on the *raiyat* in the prescribed manner, and when it has been so served, it shall for the purposes of this section be deemed to have been tendered.

(*3*) If a *raiyat* on whom a draft of an agreement has been served under sub-section (*2*) executes the agreement and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(*4*) When an agreement has been executed and filed by a *raiyat* under sub-section (*3*), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(*5*) If the *raiyat* does not execute the agreement and file it under sub-section (*3*), he shall be deemed for the purposes of this section to have refused to execute it

(*6*) If a raiyat refuses to execute an agreement of which a draft has been tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(*7*) If the *raiyat* agrees to pay the rent so determined he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment subject to the provisions of this Act unless he has acquired a right of occupancy.

(*8*) If the *raiyat* does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(*9*) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by *raiyats* for land of a similar description and with like advantages in the same village.

(*10*) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

Explanation of "admitted to occupation."

47. Where a *raiyat* has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this Chapter, notwithstanding that the lease may purport to admit him to occupation.

S. 47.—Entire period of occupation and not that stated in *kabuliyat* should be taken into calculation.—A.I.R. 1932 Pat. 363.

CHAPTER VII.

UNDER-*raiyats*.

Application of Chapter VII to all under-*raiyats*.

47A. The provisions of this Chapter shall apply to all under-*raiyats* whether their tenancies were created before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928.

Liability of under-*raiyat* to pay rent.

48. When an under-*raiyat* is admitted to the occupation of land, he shall, subject to the provisions of this Act, become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission:

Provided that the rent or rate of rent agreed upon shall not be less than the rent or rate of rent payable by the *raiyat* to his landlord.

S. 48.—Application of the section is not confined to cases where land held by raiyat is contemporaneous with land held by under-raiyat.—56 Cal. 217; 127 I.C. 839.

Though very small items more were added in sub-lease transferee being an under-raiyat S. 48 applied.—A.I.R. 1929 Pat. 372.

S. 48 is retrospective in operation.—40 C.W.N. 569.

Ejectment of an under-raiyat on expiry of lease executed before B. T. (Amending) Act of 1928.—40 C.W.N. 1275.

S. 48 is applicable where rent in kind or, in the alternative, in money is payable, but not where the alternative money is recoverable at the landlord's option. This

section applies even where the landlord of under-raiyat is himself an under-raiyat.—36 C.W.N. 89.

Enhancement of rent of under-*raiyat*.

48A. The rent of an under-*raiyat* shall not be enhanced except under the provisions of section 48B or 48D *or section 48G, as the case may be.*

Enhancement by contract.

48B. (*1*) The money rent of an under-*raiyat* may be enhanced by a written registered contract:

Provided that the rent shall not be enhanced so as to exceed by more than four annas in the repee the rent previously payable by the under-*raiyat*, except in the following cases namely:—

(*i*) When an under-*raiyat* binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding wholly or partly at the cost of *his landlord* and to the benefit of which the under-*raiyat* is not otherwise entitled, but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and except when the under-*raiyat* is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(*ii*) When an under-*raiyat* has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of his landlord and the under-*raiyat* agrees, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

(*2*) The rent fixed by a contract under the provisions of sub-section (*1*), shall not be liable to enhancement during a period of fifteen years from the date of such contract.

S. 48B—as inserted by Amended B. T. Act is not retrospective.—38 C.W.N. 167.

Ejectment of under-*raiyat*.

48C. An under-*raiyat* shal, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely:—

(*a*) on the ground that he has failed to pay an arrear of rent:

Provided that, if the under-*raiyat* is one whose rent is payable in terms of cash and not of produce and he pays through the Court all arrears up to date together with such interest and damages as the Court may award, he shall not be liable to ejectment on account of such arrears;

(*b*) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on the breach of which he is, under the terms of the contract between himself and his landlord, liable to be ejected;

(*c*) on the ground that the term of his lease has expired, when he holds the land under a written lease;

(*d*) on the ground that the tenancy has been terminated by his landlord by one year's notice expiring at the end of the agricultural year when he holds the land otherwise than under a written lease; or

(*e*) on the ground that he does not agree to pay the rent determined by the Court under sub-section (*4*) of section 48D:

Provided that an under-*raiyat* shall not be liable to ejectment on the grounds specified in clause (*c*) or clause (*d*)—

(*i*) if the under-*raiyat* has—

(1) been admitted in a document by the landlord to have a permanent and heritable right to his land, or

(2) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon,

Ben. Act IV of 1908.

(*ii*) in the case of under-*raiyats* other than those described in clause (*i*) of this proviso unless the landlord has satisfied the Court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or with the aid of partners.

S. 48C—is not retrospective.—55 C.L.J. 170.

Notice required under the amended Act being different and there being no specific provision in it as to retrospective effect, an under-raiyat holding otherwise than under a written lease would be governed by old Act.—37 C.W.N. 689.

An under-raiyat, the terms of whose written lease expired before the Amended B. T. Act came into force is not entitled to the benefit of Proviso (*i*) (2) of S. 48 (*c*) and is liable to ejectment under the old Act.—38 C.W.N. 841.

S. 48 C (3)—is not retrospective.—36 C.W.N. 400.

In case of permanent lease by a Hindu widow to an under-raiyat without legal necessity, the under-raiyat is not liable to be evicted if occupancy right has been acquired by custom.—37 C.W.N. 333.

Enhancement by suit.

48D. (*1*) The landlord of an under-*raiyat* may, subject to the provisions of this Act, institute a suit to enhance the rent of the under-*raiyat*, and to eject the under-*raiyat* if he refuses to pay the rent determined by the Court.

(*2*) The Court shall determine what rent is fair and equitable for the holding; provided that the rate of rent so determined shall not in the case of a money rent exceed one-third of the value of the average estimated produce of the land for the decennial period preceding the institution of the suit and in the case of a produce rent one-half of such produce.

(*3*) The Court shall thereupon inquire from the under-*raiyat* if he agrees to pay the rent so determined. If the under-*raiyat* agrees, he shall be entitled to remain in occupation of his holding at that rent for a term of fifteen years from the date of the agreement.

(*4*) If the under-*raiyat* does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(*5*) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

Application for restitution by under-*raiyat*.

48E. When a *landlord* has ejected an under-*raiyat* on the grounds specified in clause (*c*) or clause (*d*) of section 48C, the under-*raiyat* may apply to the Court by which the decree for ejectment was passed to be put in possession of the holding from which he was ejected by way of restitution if, within four years of the ejectment, the landlord sublets the holding or any portion thereof; and thereupon the Court may, if satisfied after inquiry that the landlord did not use the land for his homestead, or for cultivation by himself or by hired servants or by members of his family or with the aid of partners, order a recovery of possession

on such terms, if any, with respect to compensation to the persons injured as to the Court may seem just.

Incidents of holding of under-*raiyat*.

48F. The holding of an under-*raiyat* shall descend in the same manner as other immovable property, *but subject to the provisions of sub-section (2) of section 48G,* shall not be transferable except with the consent of the landlord.

Occupancy rights of under-*raiyat*.

48G. (*1*) Every under-*raiyat* who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, had by custom a right of occupancy in any land, shall have a right of occupancy in that land.

(*2*) Every under-*raiyat* who has a right of occupancy in his holding shall have, as regards his immediate landlord, all the rights and liabilities of a *raiyat* with a right of occupancy, as set forth in—

(*i*) Chapter V other than those conferred or imposed by sections 20, 21 *and 22,*

(*ii*) sections 65, 116 and 178, so far as possible, and

(*iii*) Chapter XIV,

and his holding, as against such landlord, shall be deemed to be the holding of any occupancy-*raiyat* for the purposes of the said sections or Chapters.

(*3*) The interest of an under-*raiyat* who has a right of occupancy in his holding shall not be deemed to be a protected interest under clause (*d*) of section 160.

(*4*) The provisions of sections 48A to 48E shall not apply to an under-*raiyat* who has a right of occupancy in his holding, in so far as such provisions are inconsistent with this section.

48H. [Repealed by Bengal Act VI of 1938.]

Mortgage by under-*raiyat*.

49. (*1*) Nothwithstanding anything contained in section 48F, an under-*raiyat* may enter into a complete usufructuary mortgage in the same manner and on the same conditions as are provided in section 26G for occupancy-*raiyats* and the provisions of that section shall apply so far as may be to under-*raiyats* as if they were occupany-*raiyats.*

(*2*) Such mortgage shall not be binding upon the landlord of the under-*raiyat.*

S. 49.—In a suit for ejectment upon notice to quit defendant is to prove his right to remain on land on the basis of some occupancy or permanent right.—57 C.L.J. 37.

There was a transfer of a non-transferable occupancy holding on 30th March, 1928, leaving an under-raiyat on the land. Plaintiff attempted to enter upon the land in June 1929, on the ground of abandonment by the raiyat but was opposed by the under-raiyat, whereupon a suit for his eviction was brought by the plaintiff.

Held, as there was no determination for the tenancy before plaintiff entered upon the land and as the amended B. T. Act came into operation before that date, the under-raiyat was not liable to eviction.—38 C.W.N. 445.

CHAPTER VIIA.

RESTRICTIONS ON ALIENATION OF LAND BY ABORIGINALS.

Application of Chapter.

49A. (*1*) This Chapter shall apply in the first instance only to the Sonthals of the districts of Birbhum, Bankura and Midnapore, who shall be deemed to be aboriginals for the purposes of this Chapter.

(*2*) The Local Government may, from time to time, by notification published in the *Calcutta Gazette*, declare that the provisions of this Chapter shall, in any district or local area, apply to such of the following aboriginal castes or tribes as may be specified in the notification, and that such castes or tribes shall be deemed to be aboriginals for the purposes of this Chapter, namely:—

Sonthals of other districts, Bhuiyas, Bhumijes, *Daluas*, Garos, Gonds, Hadis, Hajangs, Hos, Kharias, Kharwars, Kochs (Dacca Division), Koras, Maghs (Bakarganj District), Mal and Sauria Paharias, Meches, Mundas, *Mundias*, Oraons and Turis.

(*3*) The publication of a notificsation under sub-section (*2*) shall be conclusive evidence that the provisions of this Chapter have been duly applied to such castes or tribes.

(*4*) The Local Government may, by the like notification, declare that this Chapter shall, in any district or local area, cease to apply to the Sonthals mentioned in sub-section (*1*) or to any caste or tribe to which it may have been applied under sub-section (*2*).

(*5*) Notwithstanding anything elsewhere contained in this Act, the Local Government may, in the manner provided for in sub-sections (*2*) and (*4*), declare that the provisions of this

Chapter applicable to aboriginal *raiyats* shall apply so far as may be, or cease to apply to *raiyats* within such colonisation areas in the Sundarbans as may be specified in the notification.

Restrictions on transfer of tenant rights.

49B. No transfer by an aboriginal tenure-holder, *raiyat* or under-*raiyat* of his right in his tenure or holding, or in any portion thereof, by private sale, gift, will, mortgage, lease or any contract or agreement, shall be valid to any extent except as provided in this Chapter.

S. 49B.—Record of rights describing under-raiyat as having occupancy right—Presumption is that he has acquired it by custom.—33 C.W.N. 1193.

In the absence of proof of occupancy right under-raiyats holding otherwise than under a written lease are liable to be ejected.—37 C.W.N. 643.

Notice to quit was served on under-raiyat before B. T. Act (Amended), 1928, was passed, but the period of notice expired after the New Act came into force. Held, that the under-raiyat was liable to ejectment.—38 C.W.N. 105; 167.

Lease by tenure-holder.

49C. An aboriginal tenure-holder may grant a lease to another aboriginal, to hold the land as a tenure-holder, or to cultivate it as a *raiyat*, in accordance with the provisions of this Act.

Sub-letting by *raiyat*.

49D. An aboriginal *raiyat* may sub-let his holding to another aboriginal to cultivate it as an under-*raiyat*.

Usufructuary mortgage by tenure-holder, *raiyat* or under-*raiyat*.

49E. (*1*) An aboriginal tenure-holder, *raiyat* or under-*raiyat* may enter with another aboriginal into a complete usufructuary mortgage in respect of any land under his own cultivation, for any period which does not and cannot, in any possible event, by any agreement, express or implied, exceed seven years, or the period of his own right, whichever is less:

Provided that every mortgage so entered into shall be registered under the Indian Registration Act, 1908.

(*2*) An aboriginal tenant's power to mortgage his land shall be restricted to only one form of mortgage, namely, a complete usufructuary mortgage.

Application to Collector for transfer in certain cases.

49F. (*1*) If in any case—

(*a*) an aboriginal tenure-holder is unable to lease his land as provided in section 49C, or an aboriginal *raiyat* is unable to sub-let his holding as provided

in section 49D, or an aboriginal tenure-holder, *raiyat* or under-*raiyat* is unable to mortgage his land to another aboriginal as provided in section 49E, sub-section (*1*), or

(*b*) an aboriginal tenure-holder, *raiyat* or under-*raiyat* desires to transfer his land, or any portion thereof, by private sale, gift or will to any person,

he may apply to the Collector for permission, in case (*a*), to transfer the same to a person who is not an aboriginal, or in case (*b*), to transfer the same by private sale, gift or will to any person; and the Collector may pass such order on the application as he thinks fit.

(*2*) Every such transfer shall be made by registered deed, and before the deed is registered and the land transferred, the written consent of the Collector shall be obtained to the terms of the deed and to the transfer.

(*3*) Nothing in this section shall validate a transfer of any land or portion thereof which, by the terms upon which it is held, or by any law or local custom, would not be transferable except for the provisions of this section.

Courts not to register, or recognize as valid, transfers in contravention of this Chapter.

49G. No transfer by an aboriginal tenure-holder, *raiyat* or under-*raiyat* in contravention of the provisions of this Chapter shall be registered or in any way recognized as valid by any Court, whether in the exercise of civil, criminal or revenue jurisdiction.

Power to Collector to set aside improper transfers by tenure-holder, *raiyat* or under-*raiyat*.

49H. (*1*) If a transfer of a tenure or holding, or any portion thereof, is made by an aboriginal tenure-holder, *raiyat* or under-*raiyat* in contravention of the provisions of section 49B, or if the transferee has continued or is in possession in contravention of the provisions of section 49E, sub-section (*1*), or section 49E, as the case may be, the Collector may, on his own initiative or on application made in that behalf, by an order in writing, eject the transferee from such tenure, holding or portion:

Provided that—

(*a*) the transferee whom it is proposed to eject has not been in continuous possession in contravention of this Act for twelve years, and

(*b*) he is given an opportunity of showing cause against the order of ejectment.

(*2*) When the Collector has passed any order under sub-section (*1*), he shall either—

(*a*) restore the transferred land to the aboriginal tenure-holder, *raiyat* or under-*raiyat*, or his heir or legal respresentative, or

(*b*) failing the transferor or his heir or legal representative, declare that the right of settlement is vested in the landlord subject to the provisions of section 49J, provided that if the right is not exercised within one year, the Collector may, within six months, settle the land on behalf of the landlord on such terms as he deems fit with an aboriginal; and, if the Collector is unable to make such settlement within the said period, an unrestricted right of settlement will vest in the landlord.

Sesettlement of certain tenancies.

49J. (*1*) Whenever—

(*a*) the right of settlement of any tenancy, or any portion thereof, is declared to be vested in the landlord under clause (*b*) of sub-section (*2*) of section 49H, or

(*b*) an aboriginal tenant surrenders his tenancy or a portion thereof, or abandons his residence and ceases to hold his tenancy,

the landlord may, subject to the provisions of sections 86, 86A and 87,—

(*i*) settle the tenancy, or a portion thereof, with an aboriginal, or

(*ii*) with the approval of the Collector in writing settle the same with a person who is not an aboriginal or retain it in his own possession: provided that such approval shall not be withheld if the Collector is satisfied that the surrender or abandonment refered to in this sub-section is not made with the object of evading the provisions of section 49B, 49E or 49F.

(*2*) If any landlord resettles or otherwise deals with any tenancy as aforesaid in contravention of the provisions of sub-section (*1*), the Collector may take action, so far as may be, in accordance with the provisions of section 49H.

Restrictions on sale of tenant rights under order of Court.

49K. Notwithstanding anything in this Act, no decree or order shall be passed by any Court for the sale of the right of an aboriginal tenure-holder, *raiyat* or under-*raiyat* in his tenure or holding, or in any portion thereof, nor shall any such right be sold in execution of any decree or order:

Provided as follows:—

(*a*) any tenure or holding belonging to an aborigianl may be sold, in execution of a decree of a competent Court, to recover an arrear of rent which has accrued in respect of the tenure or holding;

(*b*) nothing in this section shall affect any right to execute a decree for the sale of any such tenure or holding, or the terms or conditions of any *bona fide* contract relating thereto, if such decree was passed, or such contract registered,—

(*i*) in the case of the Sonthals of the districts of Birbhum, Bankura and Midnapore, before the 1st November, 1916, and

(*ii*) in the case of other castes and tribes to which this Chapter has been applied, at least one year before the date of the publication of the notification under section 49A, sub-section (*2*), in respect to such castes or tribes;

(*c*) nothing in this section shall affect any right for the sale of any such tenure or holding for the recovery of any dues which are recoverable as public demands.

Stay of execution of decrees.

49L. If the sale of a tenure or holding, or any portion thereof, is ordered in execution of a decree against an aboriginal tenure-holder, *raiyat* or under-*raiyat* in respect of such tenancy or portion thereof, the Court executing the decree shall allow the tenant reasonable time in which to pay the amount due.

Appeal and revision.

49M. (*1*) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the Collector of the district from any order made under section 49F, 49H or 49J by any officer in the district exercising the powers of a Collector, and the order of the Collector on appeal shall be final:

Provided that every order passed by the Collector on

appeal shall be subject to revision and modification by the Commissioner.

(*2*) Notwithstanding anything in sub-section (*1*), an appeal from any order made under any of the sections mentioned in that sub-section by an officer acting under Chapter X of this Act shall be to such officer as the Local Government may appoint in this behalf, and the orders of such officer on appeal shall be final:

Provided that, in every such case, every order passed by the said officer on appeal shall be subject to revision and modification by such officer as the Local Government may appoint to deal therewith.

(*3*) An appeal, as provided in sub-section (*1*), shall lie to the Commissioner from any original order made by the Collector of the district under any of the sections mentioned in that sub-section.

Bar to suits.

49N. Notwithstanding anything in this Act, no suit shall lie in any Civil Court to vary or set aside any order passed by the Collector in any proceeding under this Chapter except on the ground of fraud or want of jurisdiction.

Saving of certain transfers.

49O. Nothing in this Chapter shall affect the validity of any transfer (not otherwise invalid) by a tenure-holder, *raiyat* or under-*raiyat* of his tenure or holding, or any portion thereof, made *bona fide*,—

(*a*) in the case of the Sonthals of the districts of Birbhum, Bankura and Midnapore before the 1st November, 1916, and

(*b*) in the case of other castes and tribes to which this Chapter has been applied, at least one year before the date of the publication of the notification under section 49A, sub-section (*2*), in respect to such castes or tribes.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

Rules and presumptions as to fixity of rent.

50. (*1*) Where a tenure-holder or *raiyat* and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

(*2*) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or *raiyat* and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institutio of the suit or proceeding, it shall be presumed until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(*3*) The operation of this section, so far as it relates to land held by a *raiyat*, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(*4*) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

S. 50.—By a confirmatory kabuliyat tenant agreed to pay higher rent where landlord kept excess land in suspense. Presumption was held to be rebutted by proof of variation in the rental although as a matter of fact rent as actually paid was uniform.—**34 C.W.N. 991.**

Presumption under this section arises only in cases under B. T. Act.—34 C.W.N. 675.

Presumption under this section was not given effect to where there was material alteration in a kabuliyat.—50 C.L.J. 173.

If the tenancy is really of permanent character, slight variation in rent does not destroy its permanent nature.—55 C.L.J. 398.

Variation of rent, however small, may be enough to lose the presumption under this section.—57 C.L.J. 500.

Presumption under sec. 50 (2), if rebutted by only substantial variation.—40 C.W.N. 1279.

Where in an agreement the rental payable was fixed at a certain sum in cash and a certain amount of paddy and it was stipulated that the rent would not be altered on any account, it was held that the tenancy was a tenancy at a fixed rate in perpetuity.—38 C.W.N. 797.

Presumption as to amount of rent and conditions of holding.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Alteration of rent on alteration of area.

Alteration of rent in respect of alteration of area.

52. (*1*) Every tenant shall—

(*a*) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made; and

(*b*) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(*2*) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

(*a*) the origin and conditions of the tenancy, for instance whether the rent was a consolidated rent for the entire tenure or holding;

(*b*) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise, with the knowledge and consent of the landlord;

(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area; and

(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(*3*) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description, and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which, under the circumstances of the case, is unfair or inequitable.

(*4*) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

(*5*) When in a suit under this section the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding exclusive of such excess area.

(*6*) When in a suit under this section the landlord or tenant proves that—

(*i*) at or about the time when the area was recorded in any *patta* or *kabuliyat* there existed in respect of the estate or permanent tenure or part thereof in which the tenure or holding is situated a practice of settlement being made after measurement of the land assessed with rent, or,

(*ii*) the area entered in the counterfoil receipts corresponds with the area in the rent-roll on which the claim is based and that a practice of settlement on measurement prevailed at the time when the rent-roll was prepared,

it shall be presumed that the area of the tenure or holding was settled by measurement.

S. 52—Reduction of rent for reduction of land by diluvion is allowed but the onus of proof is upon tenant.—35 C.W.N. 1001.

Sub-sec. (6) of S. 52, as amended by the Act of 1928, is retrospective in operation, applying to all actions, pending or future.—39 C.W.N. 668.

If the lease of a tenure be within specified boundaries the mere fact that the area proves to be larger than what was originally stated by guess would not entitle the lessor to additional rent.—58 Cal. 686.

If landlord can show what the quantity of land was at the inception or last assessment or adjustment of rent and that no consolidated rent for the total area was settled, he can get additional rent for excess land.—56 C.L.J. 279.

Deduction of 10 p. c. to be made on area found by settlement authorities.—40 C.W.N. 1022.

Landlord who has not paid additional cesses for additional area for which additional rent has been assessed cannot recover any cesses from tenant in respect of additional rent.—56 Cal. 919.

Presumption is that standard of measurement at the time of letting out was the same as it is now if not otherwise proved.—37 C.W.N. 450.

"Area" does not signify share in a plot.—35 C.W.N. 210.

Payment of rent.

Instalments of rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

Time and place for payment of rent.

54. (*1*) Every tenant shall pay or tender each instalment of rent before sunset of the day on which it falls due:

Provided that the tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(*2*) The payament or tender of rent may be made—

(*i*) at the landlord's village-office or at such other convenient place as may be appointed in that behalf by the landlord; or

(*ii*) by postal money-order in the manner prescribed by rules made by the Local Government.

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 61.

(*3*) Where rent is sent by postal money-order in the manner prescribed, the Court may presume until the contrary is proved that a tender has been made.

(*4*) When a landlord accepts rent sent by postal money-order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money-order form.

(*5*) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed to be an arrear.

Appropriation of payments.

55. (*1*) When a tenant makes a payment on account of rent, he may declare the year or the years and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(*2*) If he does not make any such declaration, the payment may be credited to the account of such year and the instalment as the landlord thinks fit.

Receipts and accounts.

Tenant making payment to his landlord entitled to a receipt.

56. (*1*) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(*3*) The landlord shall prepare and retain a counterfoil of the receipt.

(*3*) The receipt and counterfoil shall specify such of the several particulars shown in Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may, from time to time, prescribe or sanction a modified form, either generally or for any particular local area or class of cases.

(*4*) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Tenant entitled to full discharge or statement of account at close of year.

57. (*1*) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(*2*) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive, within three months after the end of the year, a statement of account specify-

ing the several particulars shown inSchedule II to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(*3*) The landlord shall prepare and retain a copy of the statement containing similar particulars.

Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.

58. (*1*) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars required by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount of value of that rent, as the Court thinks fit.

(*2*) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year required in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(*3*) If a landlord or his agent, without reasonable cause, fails to deliver to the tenant a receipt or statement or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent,, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

(*4*) The Collector may hold a summary inquiry under sub-section (*3*), either on information received from a Revenue-officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon the report of a Civil Court.

(*5*) Where, in any case instituted under sub-section (*3*), the Collector discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant to pay to such landlord or agent such compensation, not exceeding fifty rupees, as the Collector thinks fit.

(*6*) An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under sub-section (*3*) or awarding compensation under sub-section (*5*); and the order passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue, be final.

(*7*) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.

(*8*) For the purpose of an inquiry under this section the Collector shall have power to summon, and enforce the attendance of witnesses, and compel the production of documents in the same manner as is provided in the case of a Court under the Code of Civil Procedure, 1908.

(*9*) The existence of a dispute as to the rent or area of a tenancy on account of which rent is paid shall not be deemed to be a reasonable cause for refusing, neglecting or otherwise failing to deliver—

(*a*) a receipt for any amount actually paid on account of rent, or

(*b*) the statement of account required by section 57,

and the refusal of the tenant to accept the receipt shall not be deemed to be a reasonable cause for failing to prepare and retain a counterfoil of such receipt as required by section 56.

Local Government to prepare forms of receipt and account.

59. (*1*) The Local Government shall cause to be prepared and kept for sale to landlords at all sub-divisional officers forms of receipts with counterfoils and of statements of account suitable for use under sections 56 to 58.

(*2*) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

Effect of receipt by registered proprietor, manager or mortgagee.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

S. 60.—Court is not bound to consider the question where no objection as to registeration of landlord's name is raised in written statement.—49 C.L.J. 372.

Plaintiff whose name has not been registered under sec. 73 of the Bengal Registration Act cannot get a decree.—134 I.C. 624.

Deposit of rent.

Application to deposit rent in Court.

61. (*1*) In any of the following cases, namely:—

(*a*) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(*b*) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(*c*) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on their behalf; or

(*d*) when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court a sum not less than the amount of the money then due.

(*2*) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (*a*) and (*b*), the name of the person to whose credit the deposit is to be entered and the name of his common agent, if any,

in case (*c*), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (*d*), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner provided in sub-rules (*2*) and (*3*) of rule 15 of Order VI in Schedule I to the Code of Civil Procedure, 1908, by the tenant, or, where he is not personally cognizant of the facts of the case by some person so cognizant; and shall in cases (*a*) and (*b*) be accompanied by the prescribed cost of transmission of the money deposited to the landlord and in cases (*c*) and (*d*) by a fee of the prescribed amount.

Receipt granted by Court for rent deposited to be a valid acquittance.

62. (*1*) If it appears to the Court to which an application is made under section 61 that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(*2*) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (*a*) and (*b*) of section 61 by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section, by the co-sharers to whom the rent is due; and

in case (*d*) of that section, by the person entitled to the rent.

Procedure for payment to the landlord of rent deposited.

63. The Court receiving a deposit—

(*i*) in case (*a*) or (*b*) of section 61 shall forthwith forward the same by postal money-order to the address of the landlord, or of the common agent, if any, of the landlord empowered to receive rent;

(*ii*) in case (*c*) or (*d*) of that section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under section 64 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith in case (*c*) cause a notice of the receipt of the deposit to be posted free of charge at the landlord's village-office, if any, and in some conspicuous place in the village in which the

tenure or holding or any portion thereof is situated, and in case (*d*) cause a like notice to be served free of charge on every person who it has reason to believe claims, or is entitled to, the deposit.

Payment or refund of deposit.

64. (*1*) The Court may pay the amount of the deposit notified under section 63 to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(*2*) If no payment is made under clause (*i*) of section 63 or under sub-section (*1*) of section 64 before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(*3*) No suit or other proceeding shall be instituted against the *Crown,* or against any officer of the *Crown,* in respect of anything done by a Court receiving a deposit under section 62 but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Note:—The words "the Crown" have been substituted for "the Secretary of State for India in Council" and "the Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

Penalty for refusing to receive rent.

Penalty for refusing to receive rent tendered by postal money-order or deposited.

64A. If a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money-order or deposited in Court, the landlord shall be precluded from recovering by suit interest, costs or damages in respect of the same, and the Court may in addition award to the tenant damages not exceeding twenty-five *per cent.* on the whole amount claimed by the plaintiff.

The plea of the existence of any dispute as to the amount of rent or area of land of the tenure or holding shall not be deemed to be a reasonable cause under this section:

Provided that, when a landlord accepts rent, which has been deposited or remitted by postal money-order, the fact of his ac-

ceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the application for permission to deposit or in the postal money-order form.

Arrears of rent.

Liability to sale for arrears in case of permanent tenure, holding at fixed rates or occupancy-holding.

65. Where a tenant is a permanent tenure-holder, a *raiyat* holding at fixed rates or an occupancy-*raiyat*, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, [redacted] and the rent shall be a first charge thereon.

S. 65.—Rent is the first charge only so long as relationship of landlord and tenant subsists.—36 C.W.N. 518.

After confirmation of sale of a tenure or holding in execution of a previous rent decree, a decree for rent is not a decree under Ch. VII of B. T. Act and does not constitute first charge.—34 C.W.N. 703.

Ejectment for arrears in other cases.

66. (*1*) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a *raiyat* holding at fixed rates or an occupancy-*raiyat*, at the end of the agricultural year the landlord may, whether he has obtained a decree for the recovery of the arrear or not and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(*2*) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within thirty days from the date of the decree, or when the Court is closed on the thirtieth day on the day upon which the Court re-opens.

(*3*) The Court may for special reasons extend the period of thirty days mentioned in this section.

S. 66.—This section does not apply to an under-raiyat with a right of occupancy.—33 C.W.N. 1193: 54 C.L.J. 68.

No *res judicata* as regards status of under-raiyat in a subsequent suit for ejectment because of a previous decree under sec. 66 against an under-raiyat with permanent rights.—34 C.W.N. 887.

Interest on arrears.

67. An arrear of rent shall bear simple interest at the rate of *six and a quarter per centum per annum* from the expiration of that quarter of the agricultural year in which the instalment falls due to the date of payment or of the institution of the suit, whichever date is earlier.

S. 67.—Any stipulation for interest exceeding 12½% is unenforceable, no matter whether contract was made before or after the Amended B. T. Act.—54 C.L.J. 215.

Interest is payable if rent is not paid in time.—58 Cal. 84.

Where rent is not determined no interest is payable.—57 C.L.J. 516.

S. 67 is not applicable to produce rent.—120 I.C. 46.

Interest payable on rent either on a contract or under the law is not rent as defined in B. T. Act and a separate suit for interest only is not maintainable as a rent suit under B. T. Act.—38 C.W.N. 184.

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

68. (*1*) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five *per centum* on the amount of rent decreed, as it thinks fit:

Provided that interest shall not be decreed when damages are awarded under this section:

Provided also that where damages are awarded—

(*i*) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and

(*ii*) interest on the arrear may be awarded from the date of the institution of the suit up to the date of payment at such rate as the Court directs.

(*2*) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five *per centum* on the whole amount claimed by the plaintiff, as it thinks fit.

69. (*Order for appraising or dividing produce.*) *Repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 45.*

70. (*Procedure where officers appointed.*) *Repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 45.*

71. (*Rights and liabilities as to possession of crop.*) *Repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 45.*

Liability for rent on change of landlord or after transfer of tenure or holding.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer.

72. (*1*) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

(*2*) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

Liability for rent before transfer of occupancy-holding.

73. When an occupancy-*raiyat* transfers his holding in whole or in part the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer:

Provided that the transferor shall not be liable to the landlord for such arrears of rent if the transferee has agreed to pay such arrears to the landlord and the fact has been mentioned in the instrument of transfer.

S. 73.—S. 73, Proviso, if retrospective in operation.—40 C.W.N. 149.

Illegal cesses, etc.

Abwab, etc., illegal.

74. (*1*) All impositions upon tenants under the denomination of *abwab, mathat* or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and revervations for the payment of such shall be void.

(*2*) All impositions upon tenants of road cess or public works cess, or of both,—

(*a*) in excess of the net amount fixed by clause (*2*) of section 41 of the Cess Act, 1880, or

(*b*) on any scale in excess of that required by clause (*3*) of that section,

levied in addition to the actual rent, shall be illegal, and all stipulations and reservations for payment of any such excess contained in any contract made between a landlord and a tenant on or after the 13th day of October, 1880, shall be void:

Provided that nothing in this sub-section shall affect the terms of a written contract registered before the commencement of the Bengal Tenancy (Amendment) Act, 1919:

Provided also that, subject to the provisions of section 72 of the Indian Contract Act, 1872, no suit shall lie for the recovery of anything paid before the commencement of the Bengal Tenancy (Amendment) Act, 1919, on account of the impositions referred to in sub-section (*2*).

(*3*) Nothing in this section shall be deemed to affect the terms of a permanent *mukarrari* lease granted by a proprietor or holder of a permanent tenure in a permanently settled area and registered before the commencement of the Bengal Tenancy (Amendment) Act, 1928.

S. 74.—The actual rental within the meaning of sec. 74 would be the entire amount which the tenure-holder agreed to pay at the creation of the tenure whether it contained abwab or not. If abwab forms a part of the rent though contatned in a separate clause it is not illegal.—119 I.C. 65; 132 I.C. 97.

Contract for rendering gratuitous service for some days in a year in lieu of rent is not illegal.—49 C.L.J. 189.

It is a question of fact to be determined in each case if a contract to supply goats, molasses or any thing over and above rent is or is not abwab.—56 Cal. 919.

Agreement to supply wood was not held to be an abwab in the circumstances of the case.—59 Cal. 513.

74A. (*1*) *If a landlord or his agent realises from a tenant any imposition declared under sub-section (1) of section 74 to be illegal, such landlord or agent, as the case may be, shall be liable to the same fine, to be imposed in the same manner, as in sub-section (3) of section 58, and the provisions of the sub-sections (4), (7) and (8) of the said section relating to inquiry, fine and procedure shall,* mutatis mutandis *and so far as may be, apply to proceedings under this section.*

Fine for realisation of *abwab*, etc.

(*2*) *An appeal shall lie to the District Judge against an order imposing a fine under this section, and the order passed by the District Judge on such appeal shall be final.*

(3) The imposition of a fine on a landlord or landlord's agent under this section shall not operate as a bar to the institution of a suit under section 75.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent or road cess or public works cess or interest lawfully payable, may, subject to the second proviso to sub-section (2) of section 74 within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

Suspension of provisions relating to enhancement of rent.

75A. *(1) All the provisions of this Act relating to enhancement of rent and hereby suspended for a period of ten years with effect from the twenty-seventh day of August 1937.*

Suspension of provisions relating to enhancement of rent.

(2) All decrees and orders enhancing rent passed under any of the provisions of this Act on or after the twenty-seventh day of August 1937 and before the date of the commencement of the Bengal Tenancy (Amendment) Act, 1938, are hereby repealed to be inoperative from the date of such decree or order until the expiry of the ten years referred to in sub-section (1).

(b) Any provision providing for enhancement of rent contained in any contract entered into between a landlord and a tenant during the period of ten years referred to in sub-section (1) is hereby declared to be inoperative during the said period.

(3) Notwithstanding anything contained in this Act or any other law, the period during which a decree, order or contract is rendered inoperative under this section shall not be taken into account in computing any period under the law of limitation nor in construing the terms of a contract.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

Definition of "improvement."

76. (*1*) For the purposes of this Act, the term "improvement", used with reference to a holding, shall mean any work which adds to the value of the holding which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefits, or is, after execution, made directly beneficial to it.

(*2*) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section:—

(*a*) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for drinking or for the use of men and cattle employed in agriculture;

Explanation.—Such construction on agricultural land shall not be deemed to impair the value of the land or to render it unfit for the purposes of the tenancy;

(*b*) the preparation of land for irrigation;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(*e*) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto; and

(*f*) the erection of a dwelling-house, whether of masonry bricks, stone or any other material whatsoever, for the tenant and his family, together with all necessary out-offices.

(*3*) But no work executed by the tenant of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

S. 76.—Erection of a pucca mantop as an appurtenance of the dwelling house of an occupancy raiyat, when it is not shown that the mantop is being erected as a temple for the use not only of the raiyat but also of other persons, is an improvement within sec. 76.—39 C.W.N. 422.

Right to make improvements in case of holding at fixed rates and occupancy-holding.

77. (*1*) Neither the tenant nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(*2*) If both the tenant and his landlord wish to make the same improvement the tenant shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

(*3*) Any fee realised from a tenant for permission to make any improvement in respect of his holding shall be deemed to be an *abwab* and the provisions of sub-section (*1*) of section 74 shall apply thereto.

Collector to decide question as to right to make improvement, etc.

78. If a question arises between the *raiyat* or under-*raiyat* and his landlord—

(*a*) as to the right to make an improvement, or

(*b*) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

79. (*Right to make improvement in case of non-occupancy holding*). *Repealed by the Bengal Tenancy* (*Amendment*) *Act, 1928* (*Ben. Act IV of 1928*), s. *51.*

Registration of landlord's improvements.

80. (*1*) A landlord may, by application to such Revenue-officer as the Local Government may appoint, register improvement which he has lawfully made or which has been lawfully made wholly or party at his expense or which he has assisted a tenant in making.

(*2*) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government from time to time prescribes.

(*3*) The officer receiving the application may reject it if it has not been made within twelve months—

(*a*) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(*b*) in the case of improvements made after the commencement of this Act—from the date of the completion of the wrok.

Application to record evidence as to improvement.

81. (*1*) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(*2*) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and tenant or any persons claiming under them.

Compensation for *raiyats'* improvements.

82. (*1*) Every *raiyat* or under-*raiyat* who is ejected from his holding shall be entitled to compensation for improvement which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(*2*) Whenever a Court makes a decree or order for the ejectment of a *raiyat* or under-*raiyat,* it shall determine the amount of compensation (if any) due under this section to the *raiyat* or under-*raiyat* for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the *raiyat* or under-*raiyat.*

(*3*) No compensation under this section for an improvement shall be claimable where the *raiyat* or under-*raiyat* has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(*4*) Improvement made by a *raiyat* or under-*raiyat* between the second day of March, 1883, and the commencement of this Act, shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, from time to time, by notification in the official gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors, and the mode of selecting them.

Principle on which compensation is to be estimated.

83. (1) In estimating the compensation to be awarded under section 82 for an improvement, regard shall be had—

(a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(b) to the condition of the improvement, and the probable duration of its effects;

(c) to the labour and capital required for the making of such an improvement;

(d) to any reduction or remission of rent or any other advantage given by the landlord to the *raiyat* or under-*raiyat* in consideration of the improvement; and

(e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the *raiyat* or under-*raiyat* has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and *raiyat* or under-*raiyat* agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose,

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorize the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

85. (*Restrictions on sub-letting.*) *Repealed by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 53.*

Surrender and abandonment.

85A. (*1*) A tenure-holder may apply to the Court for permission to surrender a tenure.

Surrender by tenure-holders.

(*2*) *An application under sub-section* (*1*) *shall be in the prescribed form, shall give particulars,* inter alia, *of under-tenure-holders and* raiyats, *if any, holding directly under the tenure sought to be surrendered, and of any incumbrances upon the said tenure, and shall be accompanied by the process fee prescribed for service of notices upon the landlord or his common agent, if any, under-tenure-holders and* raiyats, *if any, referred to above and incumbrancers, if any.*

(*3*) *If the Court, after hearing the parties, grants permission for the surrender of the tenure, it shall impose such equitable conditions as it may think proper.*

(*4*) *An appeal shall lie to the ordinary Civil Appellate Court from any order of a Court under this section.*

86. (*1*) A *raiyat or under-raiyat* not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

Surrender.

(*2*) But, notwithstanding the surrender, the *raiyat or under-raiyat* shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(*3*) When a *raiyat or under-raiyat* has surrendered his holding, the Court shall, in the following cases for the purposes of sub-section (*2*), presume, until the contrary is shown, that such notice was so given, namely:—

(*a*) if the *raiyat or under-raiyat* takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(*b*) if the *raiyat or under-raiyat* ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(*4*) The *raiyat or under-raiyat* may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(*5*) When a *raiyat or under-raiyat* has surrendered his holding the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(*6*) When a holding is subject to an incumbrance secured by a registered instrument, or when there is an *under-raiyat* on the holding or part thereof the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer or the under-*raiyat*, as the case may be.

(*7*) Save as provied in sub-section (*6*) nothing in this section shall affect any arrangement by which a *raiyat or under-raiyat* and his landlord may arrange for a surrender of the whole or a part of the holding.

Abatement of rent on account of diluvion and re-entry into lands which reappear.

86A. (*1*) *If the lands of a tenure or holding or a portion of such lands are lost by diluvion, the rent of the tenure or holding shall be abated by an amount which bears the same proportion to the rent of the whole tenancy, as the area lost bears to that of the whole tenancy.*

(*2*) (*a*) *Notwithstanding anything contained in this Act or any other law or any contract to the contrary, the right, title and interest of the tenant or his successors-in-interest shall subsist in such lands or portion thereof during the period of loss by diluvion not exceeding twenty years and the tenant or his successors-in-interest shall have right to immediate possession on the reappearance of such lands or portion thereof within twenty years of the loss by the diluvion, and the landlord shall have*

right to the arrears of rent without interest or damage in respect of the land which has reappeared for the period during which it was lost or for four years whichever is less.

(*b*) *The rent of the lands which have appeared, shall for the purposes of the payment both of the arrears of rent under this sub-section and of the rent due thereafter (until such rent is modified in accordance with the provisions of this Act) be calculated on the rent of the remainder of the tenancy existing when possession of the lost lands is resumed, and shall bear the proportion to that rent which the area of the lands which have appeared bears to that of the remainder of the tenancy:*

Provided that in cases where the entire tenure or holding has been lost by diluvion, the rent of the portion thereof which reappears shall be calculated in like manner on the rent existing when the entire tenancy was lost.

(*3*) *Nothing shall prevent the accrual of rights under the operation of any other enactment in any portion of the lands of a tenure or holding which have been lost by diluvion, if such lands thereafter reappear as an accretion thereto.*

Abandonment.

87. (*1*) If a *raiyat* or under-*raiyat* voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the *raiyat* or under-*raiyat* so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take into cultivation himself.

(*2*) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause a notice to be published in the prescribed manner.

(*3*) When a landlord enters under this section, the *raiyat* or under-*raiyat* shall be entitled to institute a suit for recovery of posession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-*raiyat*, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the *raiyat* or under-*raiyat* did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation

to persons injured and payment of arrears of rent as to the Court may seem just.

(*4*) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section, on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the *raiyat* or under-*raiyat* who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that *raiyat* or under-*raiyat*. If the sub-lessee refuses or neglects within two months to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (*1*) and (*2*).

(*5*) If an under-*raiyat* has—

(*a*) a right of occupancy in a holding or portion thereof, or

(*b*) been admitted in a document by the landlord to have a permanent and heritable right in his land, or

(*c*) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon.

the landlord shall, before entering on the holding, under this section, offer the whole holding, or part thereof, to the under-*raiyat* at the rent paid by him to the *raiyat* and on condition of the under-*raiyat* paying up all arrears due from that *raiyat* and a *salami* of five times the aforesaid rent. If the under-*raiyat* refuses or neglects within two months to accept the offer, the landlord may avoid the sub-tenancy and may enter on the holding and let it to another tenant, or cultivate it himself, as provided in sub-sections (*1*) and (*2*).

S. 87 is not exhaustive as to grounds under which a landlord may re-enter on relinquishment.—35 C.W.N. 217.

No abandonment when there is transfer of non-transferable occupancy holding by sub-lease by raiyat from transferee of homestead at a nominal rent.—36 C.W.N. 478.

Raiyat transferring his holding piecemeal and abandoning village without making any arrangement for payment of rent can be sued in ejectment.—9 Pat. 754 (F.B.).

When a non-transferable occupancy raiyati holding is transferred on the footing that an under-lease will be given to the transferor, the transaction is to be treated as a transfer of a part of the interest in the holding and the landlord is not entitled to re-enter in the absence of abandonment within the meaning of sec 87 or repudiation of the tenancy.—36 C.W.N. 478; 40 C.W.N. 155.

When after a tenant has transferred a part of a non-transferable occupancy holding, the sole landlord purchases the remainder, he cannot treat the entire holding as abandoned as a result of the two sales and recover possession of the whole, even if his purchase be at a Court sale in execution of a rent decree.—40 C.W.N. 269; 35 C.W.N. 648.

Whether abandonment is complete or not is a question of fact. Inference from facts found is a question of law.—10 Pat. 264.

Non-transferable occupancy holding given in usufructuary mortgage was purchased by landlord in exchange of a rent decree,—held, that abandonment such as giving landlord the right of re-entry occurred.—36 C.W.N. 344.

When abandoned, landlord may elect either course; he may re-enter or sue for rent.—11 Pat. 798 (S.B.).

Purchaser of a portion of non-transferable occupancy holding can maintain a suit for declaration to show that the decree obtained by the landlord is fraudulent and collusive.—36 C.W.N. 535.

Sub-division of tenancy.

88. *(1) Save as provided elsewhere in this section, a division of tenure or hloding or a distribution of the rent payable in respect thereof shall not be valid unless such division or distribution has been expressly consented to in writing by both—*

Division of tenancy not valid unless consented to by all parties or ordered by Civil Court.

(a) the landlord or the entire body of landlords or their agents duly authorised in that behalf, and

(b) all the co-sharer tenants:

Provided that, if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

(2) The Civil Court, on application made to it by one or more co-sharer tenants for a division of a tenure or holding or for a distribution of the rent payable in respect thereof, or for the annulment or modification of a previous division or distribution other than one made under this sub-section or under an agreement made between all the landlords and co-sharer tenants in conformance with the provisions of sub-section (1), may, by order in writing, direct such division of the tenure or holding or such distribution of rent as the Court considers fair and equitable, or annul or modify a division or distribution previously made other than one of the nature referred to above if the Court considers it unfair and inequitable:

Provied that—

(a) no such order shall be passed without notice to the landlord or the entire body of landlords or their

common agent, if any, and to the remaining co-sharer tenants, the prescribed process-fee for which shall accompany the application;

(*b*) *no order for division or distribution shall be made which would result in bringing the rent for any portion below two rupees in the case of tenures or one rupee in the case of holdings; and*

(*c*) *nothing contained in this sub-section shall be deemed to authorise a Court on an application for division or distribution to direct a division or distribution in respect of the share of any tenant other than an applicant under this sub-section or a co-sharer tenant who has been joined as a co-applicant under sub-section* (*3*).

(*3*) *On receipt of notice of an application for division or distribution under sub-section* (*2*) *a co-sharer tenant may apply to be joined as a co-applicant, and upon such application the Court shall join the said co-sharer tenant as a co-applicant without further notice to the landlord or landlords and the remaining co-sharer tenants.*

(*4*) *Every order of a Court under sub-section* (*2*) *directing division of a tenure or holding or a distribution of the rent thereof shall also direct payment to the landlord of one rupee as mutation fee by each applicant or each body of applicants including co-applicants, if any, joined under sub-section* (*3*).

(*5*) *Every order referred to in sub-section* (*4*) *shall state the date from which the division or distribution shall have effect and the joint and several liability of each co-sharer tenant for arrear of rent, if any, up to that date, shall subsist in all the lands of the entire tenure or holding.*

(*6*) *An appeal shall lie to the ordinary Civil Appellate Court from an order of a Court under this section, provided that it is presented within thirty days from the date of such order and is accompanied by the prescribed fee.*

S. 88.—Mere receipt of rent separately is not the true test to determine sub-division. It is to be seen if parties have come to a fresh agreement.—33 C.W.N. 822.

Ejectment.

No ejectment except in execution of decree.

89. No tenant shall be ejected from his tenure or holding except in execution of a decree.

S. 89.—Even after the expiry of the fixed term lessee continued in possession. Held, in the absence of any circumstances suggesting a waiver or refusal relationship of landlord and tenant was existing.—A.I.R. 1933 Cal. 477.

Measurements.

Landlord's right to measure land.

90. (*1*) Subject to the provisions of this section and any contract, a landlord may, by himself or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

(*2*) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases (namely):—

(*a*) where the area of the tenure or holding is liable by reason of alluvion or diluvion to vary from year to year, and the rent payable depends on the area;

(*b*) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation;

(*c*) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(*3*) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

Power for Court to order tenant to attend and point out boundaries.

91. (*1*) Where a landlord desires to measure any land which he is entitled to measure under section 90, the Civil Court may, on the application of the landlord make an order requiring the tenant to attend and point out the boundaries of the land.

(*2*) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

Standard of measurement.

92. (*1*) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(*2*) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(*3*) The Local Government may, after local inquiry make rules declaring for any local area the standard or standards of measurement locally in use in that area; and every declaration so made shall be presumed to be correct until the contrary is shown.

Managers.

Power to call upon co-owners to show cause why they should not appoint a common manager.

93. (*i*) When any dispute exists between co-owners of an estate or tenure or of lands held jointly between two or more estates or tenures as to the management thereof; or

(*ii*) when, owing to the existence of a large number of small co-sharers in an estate or tenure the tenants or landlords are put to inconvenience and harassment in the payment or receipt of the rent due,

the District Judge may, if it appears to him to be just and convenient, on the application of—

in case (*i*),—

(*a*) the Collector, or

(*b*) any one having an interest in the estate or tenure or in any of the estates or tenures; and

in case (*ii*),—

(*a*) more than half the tenants, or

(*b*) co-sharers holding more than half the aggregate interests in the estate or tenure,

direct notice to be served on all the co-owners or co-sharers calling on them to show cause why they should not appoint a common manager—

in case (*i*), either for the whole of the estate or tenure or estates or tenures, as the case may be, or for those portions of the estate or tenure or estates or tenures, as the case may be, which are affected by the dispute, and

in case (*ii*), for the estate or tenure in which the tenants or landlords are put to inconvenience or harassment:

Provided that a co-owner or co-sharer of an estate or tenure or a co-owner of lands held jointly between two or more estates or tenures shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner or co-sharer of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

Power to order them to appoint a manager, if cause is not shown.

94. If the co-owners fail to show cause as aforesaid within within one month after service of a notice under section 93, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

Power to appoint manager, if order is not obeyed.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under section 94, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

(*a*) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(*b*) in any case appoint a manager.

S. 95.— Notice upon common manager under sec. 80, C. P. C., is necessary as he is a public officer.—59 Cal. 961.

Power of District Judge to remove common manager appointed by proprietors in pursuance of a notice under sec. 94.—40 C.W.N. 1312.

Common manager, if agent of proprietors.—40 C.W.N. 92.

Power to nominate person to act in all cases under clause (*b*) of section 95.

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (*b*) of section 95 and, when any person has been so nominated, no other person shall be ap-

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pointed manager under that clause by the District Judge unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immovable property shall apply to the management.

Provisions applicable to manager.

98. (*1*) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

(*2*) He shall give such security for the proper discharge of his duties as the District Judge directs.

(*3*) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(*4*) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(*5*) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(*6*) He shall pass his accounts at such period and in such form as the District Judge may direct.

(*7*) He may make any application which the proprietors could make under section 103.

(*8*) He shall be removable by the order of the District Judge and not otherwise.

Power to restore management to co-owners.

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Appointment of common agent.

99A. (*1*) Where two or more persons are joint or co-sharer landlords they may by an instrument in writing appoint a common agent for the whole of their joint property or for any portion thereof to receive on behalf of all of them—

(*a*) notices of transfer under sections 12, 13, 15, 17, 18 *and 26C* of tenures or holdings or portions or shares thereof held under them within that property,

(*b*) the landlord's fee *payable under sections 12, 13, 15, 17 and 18,*

(*c*) the rent deposited in Court under section 61, *and*

(*d*) *the notices referred to in sub-section (2) of section 85A and in sub-section (2) of section 88.*

(*2*) (*a*) The Collector shall, on application by the common agent and on production by him of the instrument of appointment, register the names of the common agent and the landlords appointing him and their addresses and other particulars in the prescribed manner.

(*b*) The name and address of such common agent shall be entered upon the receipt required under section 56 to be given on the payment of rent for the tenure or holding situated within the area for which he has been appointed under sub-section (*1*).

Power to make rules.

100. (*1*) The High Court may, from time to time, make rules defining the powers and duties of managers under sections 95 to 99.

(*2*) The Board of Revenue may, from time to time, make rules defining the powers and duties of common agents under section 99A.

CHAPTER X.

RECORD-OF-RIGHT AND SETTLEMENT OF RENTS.

Part I.—Record-of-rights.

Power to order survey and preparation of record-of-rights.

101. (*1*) The Local Government may, in any case if it thinks fit, make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer, in respect of all lands in any local area, estate or tenure or part thereof:

Provided that the provisions of sections 104 to 105A, inclusive, 109C, 109D, 110, 112 and 113 shall not apply in respect of any lands which are held by a non-agriculturist and are not used for purposes connected with agriculture or horticulture.

(*2*) In particular and without prejudice to the generality of the foregoing power, the Local Government may make such an order in the following cases, namely:—

(*a*) where—

(*i*) the landlord or tenants, or

(*ii*) a proportion of not less than one-half of the total number of landlords, or

(*iii*) a landlord, or a proportion of the landlords, whose interest, or the aggregate of whose interests. respectively, in the lands of the local area, estate or tenure or part thereof is not less than one-half of the total shares of all the landlords therein, or

(*iv*) a proportion of not less than one-fourth of the total number of tenants,

applies, or apply, for such an order, repositing or giving security for, such amount for the payment of expenses as the Local Government directs;

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;

(*c*) where the local area, estate or tenure or the part thereof belongs to, or is managed *by, or on behalf of, the Crown, or is managed by* the Court of Wards or a manager appointed by the District Judge under section 95;

(*d*) where a settlement of land-revenue is being or is about to be made in respect of the local area, estate or tenure or of the part thereof.

Explanation 1.—The term "settlement of land revenue", as used in clause (*d*), includes a settlement of rents in an estate or tenure which belongs to the Government.

Explanation 2.—A superior landlord may apply for an order under this section, notwithstanding that his estate or part thereof is temporarily leased to a tenure-holder.

(*3*) A notification in the official Gazette of an order

under this section shall be conclusive evidence that the order has been duly made.

(*4*) The survey shall be made and the record-of-rights prepared in accordance with rules made in this behalf by the Local Government.

Note:—The italicised words in sub-section (2) (c) have been substituted for "by, the Government or" by the Government of India (Adaptation of Indian Laws) Order, 1937.

Particulars to be recorded.

102. Where an order is made under section 101, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following namely:—

(*a*) the name of each tenant or occupant;

(*b*) the class or classes to which each tenant belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, settled *raiyat*, occupancy-*raiyat*, non-occupancy *raiyat* or under-*raiyat*, with or without a right of occupancy and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

(*c*) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;

(*d*) the name of each tenant's landlord;

(*dd*) the name of each proprietor in the local area or estate;

(*e*) the rent payable at the time the record-of-rights is being prepared;

(*ee*) the amount payable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like at the time the record-of-rights is being prepared, the conditions and incidents appertaining to such rights, and if the amount is gradually increasing amount, the time at which, and the increments by which, it increases;

(*f*) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise;

(*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

(*gg*) the rights and obligations of each tenant and landlord in respect of—

(*i*) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil,* tank or well, or any other source of supply, and

(*ii*) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land;

(*h*) the special conditions and incidents, if any, of the tenancy;

(*i*) any right of way or other easement attaching to the land for which a record-of-rights is being prepared;

(*j*) if the land is claimed to be held rent free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and if so entitled, under what authority:

Provided that, if lands are not used for purposes connected with agriculture or horticulture, it shall be sufficient to record that fact together with the prescribed particulars relating to the occupant, the landlord and the tenancy.

S. 102 (h).—Settlement officer can record under-raiyat as acquiring occupancy right by custom.—54 C.L.J. 68.

Power to order survey and preparation of record-of-rights as to water.

102A. The Local Government may, for the purpose of settling or averting disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water,

make an order directing that a survey be made, and a record-of-rights be prepared, by a Revenue-officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

(*a*) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil,* tank or well, or any other source of supply; and

(*b*) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land

held by each tenant, whether or not such appliances be situated within the boundaries of such land.

Power for Revenue-officer to record particulars on application of proprietor, tenure-holder or large proportion of *raiyats*.

103. On the application of one or more of the proprietors or tenure-holders, or of a large proportion of the *raiyats* of an estate or tenure, and on the applicant or applicants depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with, rules made in this behalf by the Local Government, ascertain and record all or any of the particulars specified in section 102 with respect to the estate or tenure or any part thereof.

Preliminary publication, amendment and final publication of record-of-rights.

103A. (*1*) When a draft record-of-rights has been prepared, the Revenue-officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

(*2*) When such objections have been considered and disposed of according to such rules as the Local Government may make, and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent-roll has been incorporated with the record under section 104F, sub-section (*3*), the Revenue-officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(*3*) Separate draft or final records may be published under sub-section (*1*) or sub-section (*2*) for different local areas, estates, tenures or parts thereof.

Certificate of, and presumption as to, final publication, and presumption as to correctness, of record-of-rights.

103B. (*1*) When a record-of-rights has been finally published under section 103A, the Revenue-officer shall, within such time as the Board of Revenue may, by general or special order, require, make a certificate stating the fact of such final publication and the date thereof, and shall date and subscribe the same with his name and official title.

(*2*) The certificate of final publication, or, in the absence of such certificate, a certificate signed by the Collector of any

district in which the local area, estate, tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication and of the date thereof.

(*3*) The Local Government may, by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in such area; and such notification shall be conclusive proof of such publication.

(*4*) In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly certified copy thereof or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published, unless such publication is expressly denied.

(*5*) Every entry in a record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

S. 103B.—Record of rights based on Road Cess return filed by persons challenging the entry. Very strong proof is necessary to rebut that presumption.—35 C.W.N. 921.

By reference to proceedings put in before Revenue authorities presumption may be rebutted.—33 C.W.N. 196.

In a conflict between two entries the latter has preferentially evidentiary value.—134 I.C. 957; 10 Pat.L.T. 569 (F.B.).

Even when both parties challenge the entry, statutory presumption still subsists.—123 I.C. 615.

In case of conflict between presumption arising under S. 103B and S. 5 (5) complete disregard of presumption raised by the entry in Record of rights is bad.—55 C.L.J. 569.

Record was presumptive evidence of the state of things existing at the time of final publication and not at the date when the cause of action arose.—38 C.W.N. 763.

Part II.—Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.

Settlement of rents and preparation of Settlement Rent-roll when to be undertaken by Revenue-officer.

104. In every case in which a settlement of land-revenue is being, or about to made, the Revenue-officer shall, after publication of the draft of the record-of-rights under section 103A, sub-section (*1*),—

(*a*) settle fair and equitable rents for tenants of every class,

(*b*) notwithstanding anything contained in section 191, settle a fair and equitable rent for any land in respect of which he has recorded, in pursuance of clause (*j*) of section 102, that the occupant is not entitled to hold it without payment of rent, and

(*c*) prepare a Settlement Rent-roll:

Provided that the Revenue-officer shall not settle the rents of tenants of every class in an estate or tenure belonging to the Government, if it does not appear to the Local Government to be expedient that he should do so.

S. 104.—Certain persons holding as permanent lessees under the Government, after creating permanent tenures at fixed rent in their own favour, surrendered their lease and took a fresh lease for a term of 99 years under the Government. It was held that the Revenue-officer had jurisdiction to settle the rent of the tenures under section 104 of the Bengal Tenancy Act, in the absence of any direction by the Government not to do so.—42 C.W.N. 866.

104A. (*1*) For the purposes of settling rents under this Part and preparing a Settlement Rent-roll, the Revenue-officer may proceed in any one or more of the following ways or partly in one of those ways and partly in another, that is to say,—

Procedure for settlement of rents and preparation of Settlement Rent-roll under this Part.

(*a*) if in any case the landlord and tenant agree between themselves as to the amount of the rent fairly and equitably payable, the Revenue-officer shall satisfy himself that the rent so agreed upon is fair and equitable, and if he is so satisfied, but not otherwise, it may be settled and recorded as the fair and equitable rent;

(*b*) the Revenue-officer may himself propose what he deems to be the fair and equitable rent, and if the amount so proposed is accepted, either orally or in writing, by the tenant, and if the landlord, after notice to attend, raises no objection, the rent so proposed may be settled and recorded as the fair and equitable rent;

(*c*) if the circumstances are, in the opinion of the Revenue-officer, such as to make it practicable to prepare a Table of Rates showing for any local area, estate, tenure or village or part thereof, or for each class of land in any local area, estate, tenure or village or part thereof, the rate or rates

of rent fairly and equitably payable by tenure-holders and *raiyats* and under-*raiyats* of each class, he may frame a Table of Rates and settle and record all or any of the rents on the basis of such rates in the manner hereinafter described;

(*d*) the Revenue-officer may settle all or any of the rents by maintaining the existing rentals recorded in the record-of-rights as published under section 103A, sub-section (*1*), or by enhancing or reducing such rentals:

Provided that, in making any such settlement, regard shall be had to the principles laid down in sections 6 to 9 (both inclusive), 27 to 36 (both inclusive), 38, 39, 43, 50 to 52 (both inclusive), 180 and 191.

(*2*) The Settlement Rent-roll shall show the name of each landlord and of each tenant whose rent has been settled, and the amount of each such tenant's rent payable for the area shown against his name.

Contents of Table of Rates.

104B. (*1*) If a Table of Rates is prepared, it shall specify—

(*a*) the class or several classes of land for which, having regard to the nature of the soil, situation, means of irrigation, and other like considerations, it is in the opinion of the Revenue-officer necessary or practicable to fix a rate or different rates of rent; and

(*b*) the rate or rates of rent fairly and equitably payable by tenants holding land of each such class whose rent is liable to alteration.

Local publication of Table.

(*2*) When the Revenue-officer has prepared the Table of Rates, he shall publish it in the local area, estate, tenure or village to which it relates, in the vernacular language prevailing in the district, and in the prescribed manner.

Revenue-officer to deal with objections.

(*3*) Any person objecting to any entry in the Table of Rates may present a petition to the Revenue-officer within a period of one month after such publication, and the Revenue-officer shall consider any such objection and may alter or amend the Table.

Table to be submitted to superior Revenue authority.

(*4*) If no objection is made within the said period of one month, or, where objections are made, after they have been disposed of, the Revenue-officer shall submit his proceedings to the Revenue authority empowered by rule made by the Local Government to confirm the Tables and Rent-rolls prepared under this Part (hereinafter called the "confirming authority"), with a full statement of the grounds of his proposals, and shall forward any petitions of objection which he may have received.

Proceedings of confirming authority.

(*5*) The confirming authority may confirm a Table submitted under sub-section (*4*), or may disallow the same, or may amend the same in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made or may return the case for further inquiry.

Effect of Table.

(*6*) When a Table of Rates has been confirmed by the confirming authority, the order confirming it shall be conclusive evidence that the proceedings for the preparation of the Table have been duly conducted in accordance with this Act; and it may be presumed that the rates shown in the Table for tenants of each class, for each class of land, are the fair and equitable rates payable for land of that class within the area to which the Table applies.

Application of Table of Rates.

104C. When a Table of Rates has been confirmed under section 104B, sub-section (*5*), the Revenue-officer may settle all or any of the rents and prepare the Settlement Rent-roll on the basis of the rates shown in the Table by calculating the rental of each tenure or each holding of a *raiyat* or under-*raiyat* on the area of such tenure or holding at the said rates:

Provided that the Revenue-officer shall not be bound to apply the said rates in any particular case in which he may consider it unfair or inequitable to do so.

Rules and principles to be followed in framing Table of Rates and settling rents in accordance therewith.

104D. In framing a Table of Rates under section 104B, and in settling rents under section 104C, the Revenue-officer shall be guided by such rules as the Local Government may make in this behalf, and shall, so far as may be, and subject to the proviso to the said section

104C, have regard to the general principles of this Act regulating the enhancement or reduction of rents.

Preliminary publication and amendment of Settlement Rent-roll.

104E. (*1*) When a Settlement Rent-roll for a local area, estate, tenure or village or part thereof has been prepared, the Revenue-officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period, and shall receive and consider any objections made to any entry therein, or omission therefrom, during the period of publication and shall dispose of such objections according to such rules as the Local Government may make.

(*2*) The Revenue-officer may, of his own motion or on the application of any party aggrieved, at any time before a Settlement Rent-roll is submitted to the confirming authority under section 104F, revise any rent entered therein:

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Final revision of Settlement Rent-roll, and incorporation of the same in the record-of-rights.

104F. (*1*) When all objections have been disposed of under section 104E, the Revenue-officer shall submit the Settlement Rent-roll to the confirming authority with a full statement of the grounds of his proposals and a summary of the objections (if any) which he has received.

(*2*) The confirming authority may sanction the Settlement Rent-roll, with or without amendment, or may return it for revision:

Provided that no entry shall be amended, or omission supplied, until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(*3*) After sanction by the confirming authority, the Revenue-officer shall finally frame the Settlement Rent-roll and shall incorporate it with the record-of-rights published in draft under section 103A.

Appeal to, and revision by, superior Revenue authorities.

104G. (*1*) An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue-officer prior to the final publication of the record-of-rights on any objection made under section 104B,

sub-section (*3*), or section 104E; and such appeal shall lie to the prescribed superior Revenue authority.

(*2*) The Board of Revenue may, in any case under this Part, on application or of its own motion, direct the revision of any record-of-rights, or any portion of a record-of-rights, at any time within two years from the date of the certificate of final publication, but not so as to affect any order passed by a Civil Court under section 104H:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Jurisdiction of Civil Courts in matters relating to rent.

104H. (*1*) Any person aggrieved by an entry of a rent settled in a Settlement Rent-roll prepared under sections 104A to 104F and incorporated in a record-of-rights finally published under section 103A, or by an omission to settle a rent for entry in such Settlement Rent-roll, may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

(*2*) Such suit must be instituted within six months from the date of the certificate of final publication of the record-of-rights, or, if an appeal has been presented to a Revenue authority under section 104G, then within six months from the date of the disposal of such appeal.

(*3*) Such suit may be instituted on any of the following grounds, and on no others, namely:—

(*a*) that the land is not liable to the payment of rent;

(*b*) that the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;

(*c*) that the relation of landlord and tenant does not exist;

(*d*) that land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;

(*e*) that the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging;

(*f*) that the Revenue-officer has not postponed the operation of the settled rent under the provisions of

section 110, clause (*a*), or has wrongly fixed the date from which it is to take effect under that clause;

(*g*) that the special conditions and incidents of the tenancy have not been recorded, or have been wrongly recorded;

(*h*) that any right of way or other easement attaching to the land has not been recorded, or has been wrongly recorded.

No such suit shall be brought against the Crown unless the Crown is landlord or tenant of the land to which the aforesaid entry relates or in respect of which the aforesaid omission was made.

(*4*) If it appears to the Court that the entry of rent settled is incorrect, it shall, in case (*a*) or case (*c*) mentioned in sub-section (*3*), declare that no rent is payable, and shall in any other case settle a fair rent;

and, in any case referred to in clause (*f*) or clause (*g*) of the said sub-section (*3*), the Court may declare the date from which the rent settled is to take effect, or pass such order relating to the entry as it may think fit.

(*5*) When the Court has declared under sub-section (*4*) that no rent is payable, the entry to the contrary effect in the record-of-rights shall be deemed to be cancelled.

(*6*) In settling a fair rent under sub-section (*4*) the Court shall be guided by the rents of the other tenures or holdings of the same class comprised in the same Settlement Rent-roll, as settled under sections 104A to 104F.

(*7*) Any rent settled by the Court under sub-section (*4*) shall be deemed to have been duly settled in place of the rent entered in the Settlement Rent-roll.

(*8*) Save as provided in this section, no suit shall be brought in any Civil Court in respect of the settlement of any rent or the omission to settle any rent under sections 104A to 104F.

(*9*) When a Civil Court has passed final orders or a decree under this section, it shall notify the same to the Collector of the district.

Note:—The italicised words in sub-section (3) have been substituted for "The Secretary of State for India in Council shall not be made a defendant in any such suits unless the Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 104H.—One of several tenants can sue for correction of Record of rights.—58 Cal. 1341.

Limitation of a suit for declaration that the entry is wrong is 6 years under Art. 120.—34 C.W.N. I.

Presumptions as to rents settled under sections 104A to 104G.

104J. Subject to the provisions of section 104H, all rents settled under sections 104A to 104F and entered in a record-of-rights finally published under section 103A, or settled under section 104G, shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

Part III.—Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.

Settlement of rents by Revenue-officer in cases where a settlement of land-revenue is not being or is not about to be made.

105. (*1*) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, either the landlord or the tenant applies, within four months from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (*2*), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent in respect of the land held by the tenant.

Explanation.—A superior landlord may apply for a settlement of rent notwithstanding that his estate or tenure or part thereof has been temporarily leased.

(*2*) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, the Revenue-officer has recorded, in pursuance of clause (*j*) of section 102, that the occupant of any land claimed to be held rent-free is not entitled to hold it without payment of rent, and either the landlord or the occupant applies, within four months from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (*2*), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent for the land.

(*3*) Every application under sub-section (*1*) or sub-section (*2*) shall, notwithstanding anything contained in the Court-fees Act, 1870, bear such stamp as the Local Government may prescribe.

(*4*) In settling rents under this section, the Revenue-officer shall presume, until the contrary is proved, that the existing rent

is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

(*5*) The Revenue-officer may in any case under this section propose to the parties such rents as he considers fair and equitable; and the rents so proposed, if accepted in writing by the parties, may be recorded as the fair rents, and shall be deemed to have been duly settled under this Act.

(*6*) Where the parties agree among themselves, by compromise or otherwise, as to the amount of the fair rent, the Revenue-officer shall satisfy himself that the amount agreed upon is fair and equitable, and, if so satisfied, but not otherwise, he shall record the amount so agreed upon as the fair and equitable rent. If not so satisfied, he shall himself settle a fair and equitable rent as provided in sub-sections (*4*) and (*5*).

(*7*) Where the lands of the tenancy are included in different local areas for which separate records are framed, the period of limitation specified in sub-section (*1*) shall begin to run from the date of the certificate of final publication of the last record which contains entires relating to the tenancy.

S. 105.—Additional rent for additional area can be claimed in a proceeding under S. 105, but if the tenancy is composed of an undivided share the claim cannot be admitted.—35 C.W.N. 210; 34 C.W.N. 991.

Determination of question of landlord's title or his right to claim *khas* possession is not within the scope of this section.—35 C.W.N. 765.

Subject to provisions of Ss. 100 and 109A decision of Settlement officer fixing a fair and equitable rent in a proceeding under this section is final.—37 C.W.N. 744.

Whether rent is liable to enhancement must be tried and determined in a proceeding under S. 105 when the landlord claims enhancement and the tenant objects in written statement. Landlord may withdraw or allow the application to be dismissed for default, but the tenant must get a decision if he presses the issue.—37 C.W.N. 703.

An *ex parte* decision under this section settling a fair and equitable rent is not *res judicata* in a subsequent suit for declaration of his *niskar* right to the land.—38 C.W.N. 168.

Decision of questions arising during the course of settlement of rents under this Part.

105A. Where, in any proceedings for the settlement of rents under this Part, any of the following issues arise:—

(*a*) whether the land is, or is not, liable to the payment of rent;

(*b*) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;

(*c*) whether the relation of landlord and tenant exists;

(*d*) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;

(*e*) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging;

(*f*) whether the special conditions and incidents of the tenancy, or any right of way or other easement attaching to the land, have not, or has not, been recorded, or have, or has, been wrongly recorded;

(*g*) whether the rent payable at the time of final publication of the record-of-rights was correctly entered, and if not, what was the rent payable at that time;

the Revenue-officer shall try and decide such issue and settle the rent under section 105 accordingly:

Provided that the Revenue-officer shall not try any issue under this section, which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried, by a Revenue-officer in a suit instituted before him under section 106.

Ss. 105A & 106.—Court fees payable are ten times the difference between rent recorded and rent claimed.—55 C.L.J. 303.

An appeal by a co-sharer landlord against the decision in a suit brought by tenant under S. 106 for correction of record of rights abates if heirs of deceased co-sharers joined as respondents are not brought on record.—37 C.W.N. 756.

105B. When any issue is raised under section 105A, the party raising it shall pay, in addition to any other court-fees which he may be liable to pay, such court-fees as he would have been liable to pay if he had claimed relief under section 106.

Court-fees for raising an issue under section 105A.

105C. Except for reasons to be recorded in writing, no Revenue-officer shall award to any party any portion of his costs in a proceeding under section 105.

Costs not to be awarded ordinarily in proceedings under section 105 by Revenue-officer.

106. (*1*) In proceedings under this Part, a suit may be instituted before a Revenue-officer at any time within four months from the date of the certificate of the final publication of the

Institution of suit before a Revenue-officer.

record-of-rights under sub-section (*2*) of section 103A of this Act, by presenting a plaint on stamped paper for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which the said officer has made from, the record,

whether such dispute be between landlord and tenant, or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other matter;

and the Revenue-officer shall hear and decide the dispute:

Provided that the Revenue-officer may, subject to such rules as the Local Government may make in this behalf, transfer any particular case or class of cases to a competent Civil Court for trial:

Provided also that in any suit under this section the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 105A.

(*2*) Where the lands to which the dispute relates are situated in local areas for which separate records are framed, the period of limitation specified in sub-section (*1*) shall begin to run from the date of the certificate of final publication of the last record which contains enteries relating to such lands.

Procedure to be adopted by Revenue-officer.

107. In all proceedings under section 105, section 105A and section 106, the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits; and his decision in every such proceeding shall have the force and effect of a decree of a Civil Court in a suit between the parties, and, subject to the provisions of sections 108 and 115C shall be final.

Revision by Revenue-officer.

108. Any Revenue-officer especially empowered by the Local Government in this behalf, may, on application or of his own motion, within twelve months from the making of any order or decision under section 105, section 105A,

section 106 or section 107, revise the same, whether it was made by himself or by any other Revenue-officer, but not so as to affect any order passed or decree made under section 115C:

Provided that no such order or decision shall be so revised if an appeal from it has been filed under section 115C or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

S. 108.—An order under S. 108 can be set aside by High Court under S. 107, Govt. of India Act. Proceedings under S. 108 against a dead person were held invalid for their being no substitution of heirs within a year.—35 C.W.N. 336.

108A. (*Correction by Revenue-officer of mistakes in record-of-rights.*) *Transferred as section 115B, by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 74.*

Bar to jurisdiction of Civil Courts.

109. Subject to the provisions of section 115C, a Civil Court shall not entertain any application or suit concerning any matter which is or has already been the subject of an application made, suit instituted or proceedings taken under sections 105 to 108 (both inclusive):

Provided that nothing contained in this section shall debar a Civil Court from entertaining a suit concerning any matter which—

(*a*) was the subject-matter of an application under section 105, or section 105A, or of a suit under section 106, if such application or suit has been dismissed for default or withdrawn, or

(*b*) has not been finally adjudicated upon in any such proceeding or suit.

S. 109.—S. 109 application was withdrawn by a co-sharer landlord with permission to bring a fresh suit. Upon partition the holdings were exclusively allotted to plaintiff. S. 109 did not operate as a bar to a suit under S. 30 of B. T. Act.—56 Cal. 584.

Amended S. 109 is not retrospective and cannot validate a pending action which would be barred under old section.—35 C.W.N. 1147.

Civil suit, if barred after application under S. 105 withdrawn.—40 C.W.N. 773.

Amended S. 109 cannot be resorted to when under the old section the suit is bad.—57 Cal. 796.

109A. (*Appeals from decisions of Revenue-officers.*) *Transferred as section 115C, by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 76.*

PART IV.—*Supplemental provisions.*

Power of Revenue-officer to presume that agreements or compromises are lawful.

109B. In all proceedings under this Chapter, the Revenue-officer may presume that an agreement or compromise made or entered into by any landlord and his tenant is lawful;

but, when the terms of the agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, he shall not give effect to such agreement or compromise until he has given reasonable notice to such third parties to appear and be heard in the matter and unless and until he is satisfied that the statements made by the parties to the agreement or compromise are correct.

Power of Revenue-officer to settle rents on agreement.

109C. (*1*) Notwithstanding anything contained in section 109B, if, in any case while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding,

a Revenue-officer may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under this Act;

and the provisions of section 113 shall apply to a rent so settled.

(*2*) A landlord or tenant may appeal to the Special Judge appointed under section 115C, on the ground that the rent settled by the Revenue-officer, under sub-section (*1*), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(*3*) The Board of Revenue may, on application made, or of its own motion in proceedings undertaken, within one year from the date of the order, under sub-section (*1*), settling a rent as a fair and equitable rent, direct the revision of the rent so settled:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Note of decision on record.

109D. A note of all rents settled under section 105, of all decisions of issues under section 105A or section 106 and of all orders regarding the same on appeal or revision under section 108 or section 115C shall be made in, or appended to, the record-of-rights finally published under sub-section (*2*) of section 103A, and such note shall be considered as part of the record.

Date from which settled rent takes effect.

110. When a rent is settled by a Revenue-officer under this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent or (if a settlement of land-revenue is being or is about to be made) the date of final publication of the record-of-rights:

Provided as follows:—

(*a*) if the land is comprised in an area, estate or tenure in respect of which a settlement of land-revenue is being or is about to be made, the rent settled shall, subject to the provisions of section 191 take effect from the expiration of the period of the current settlement, or from such other date after the expiration of that period as may be fixed by the Revenue-officer;

(*b*) if the land is not comprised in an area, estate or tenure as aforesaid, and if the existing rent has been fixed by a contract binding between the parties for an unexpired term of years, the rent settled shall take effect from the expiration of that term, or from such other date after the expiration of that term as may be fixed by the Revenue-officer.

Note:—The words and figures "and 192" have been omitted by Bengal Act VI of 1938.

Stay of proceedings in Civil Court during preparation of record-of-rights.

111. When an order has been made under section 101, directing the preparation of a record-of-rights, then, subject to the provisions of section 104H, a Civil Court shall not,—

(*a*) where a settlement of land-revenue is being or is about to be made—until after the final publication of the record-of-rights, and

(*b*) where a settlement of land-revenue is not being made or is not about to be made—until four months after the final publication of the record-of-rights,

entertain any application made under section 158, or any suit or application for the alteration of the rent or the determination

of the status of any tenant, in the area to which the record-of-rights applies.

Limitation of jurisdiction of Civil Courts in matters, other than rent, relating to record-of-rights.

111A. No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under this Chapter or in respect of the framing, publication, signing or attestation of such a record or of any part of it, or, save as provided in section 104H, for the alteration of any entry in such a record of a rent settled under sections 104A to 104F:

Provided that any person who is dissatisfied with any entry in, or omission from, a record-of-rights framed in pursuance of an order made under section 101, sub-section (*2*), clause (*d*), which concerns a right of which he is in possession, may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, 1877. I of 1877.

Limitation of suit contemplated by S. 111A.—40 C.W.N. 22.

Limitation of suit for declaration of plaintiff's right and that the entry in settlement record is wrong.—40 C.W.N. 566.

Stay of suits in which certain issues arise.

111B. (*1*) Where a record-of-rights has been prepared and finally published in respect of the land in any area in which a settlement of land-revenue is not being made, or is not about to be made, no application or suit affecting such land or any tenant thereof shall, within four months from the date of the certificate of final publication of such record-of-rights, be made or instituted in any Civil Court for the decision of any of the following issues, namely:—

(*a*) whether the land is or is not liable to the payment of rent;

(*b*) whether the relation of landlord and tenant exists;

(*c*) whether the land is a part of a particular estate or tenancy; or

(*d*) whether there is any special condition or incident of the tenancy, or whether any right of way or other easement attaches to the land.

(*2*) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (*1*) has been instituted in a Civil Court, the Revenue-officer shall not, in a suit under section 106 or in proceedings under section 105A, try such issue unless in such civil suit such issue is not in fact tried or decided.

(*3*) Where, in the course of settling fair rents under section 105, the Revenue-officer finds that, by reason of a suit involving the decision of any of the issues mentioned in sub-section (*1*) having been instituted in a Civil Court before the final publication of the record-of-rights, or before a Revenue-officer under section 106, is unable to settle a fair rent until such issue is decided, the Revenue-officer shall stay the proceedings, for the settlement of a fair rent, pending a final decision on the issue;

and, after the issue has been finally decided, he shall settle a fair rent, as if the record-of-rights had been framed in accordance with such decision.

(*4*) Where the making of an application or institution of a suit has been delayed owing to the operation of sub-section (*1*), the period of four months therein mentioned shall be excluded in computing the period of limitation prescribed for such suit or application.

S. 111B.—In a suit under sec. 111B (*i*) (*d*) to which Art. 120 of the Limitation Act applies limitation should be counted from the date of final publication of the Record of rights.—34 C.W.N. 621.

Period of four months from the date of final publication should be deducted in computing the period of limitation in suit for declaration that entry is incorrect.—42 C.W.N. 96.

Power to authorize special settlement in special cases.

112. (*1*) The Local Government may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare,

or that any landlord is demanding or exacting rents in excess of the rents entered as payable in a record-of-rights prepared under this Chapter, or of the rents payable by reason of enhancements lawfully made after the final publication of such record, invest a Revenue-officer

with the following powers or either of them, namely:—

(*a*) power to settle all rents;

(*b*) power, when settling rents, to reduce rents if, in the opinion of the officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(*2*) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

(*2a*) A settlement of rents under this section shall be made in the manner provided by sections 104 to 104J (both inclusive).

(*2b*) If any rent other than rent for which a decree has already been obtained is in arrear in respect of a tenancy at the

time when a settlement of rents is made under this section, such arrear shall not be recoverable in any Court in so far as it exceeds the amount which would have been due as rent of the tenancy had the settlement of rent taken place at the commencement of the period for which such rent is claimed.

Period for which rents as settled are to remain unaltered.

113. (*1*) When the rent of a tenure or holding is settled under this Chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding or the holding of an under-*raiyat* having occupancy rights, for fifteen years, and, in the case of a non-occupancy holding or the holding of an under-*raiyat* not having occupancy rights, for five years; and no such rent shall be reduced within the periods aforesaid save on the ground of alteration in the area of the holding or on the ground specified in section 38, clause (*a*).

(*2*) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

Expenses of proceedings under Chapter.

114. (*1*) When the preparation of a record-of-rights has been directed or undertaken under this Chapter, in any case except where a settlement of land-revenue is being or is about to be made, the expenses incurred in carrying out the provisions of this Chapter in any local area, estate, tenure or part thereof (including expenses that may be incurred at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration of boundary marks and other survey marks erected for the purpose of carrying out the provisions of this Chapter), or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part in such proportions and in such instalments (if any) as the Local Government, having regard to all the circumstances, may determine.

(*2*) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary marks for a period not exceeding fifteen years, or such part of such amount as the Local Government may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

(*3*) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

(*4*) The cost of preparing copies of survey maps and records-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.

Explanation.—The word "tenure" in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

Presumption as to fixity of rent not to apply where record-of-rights has been prepared.

115. When the particulars mentioned in section 102, clause (*b*), have been recorded under this Chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

Demarcation of village boundaries.

115A. In the demarcation of village boundaries for the purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue-officer shall, so far as is possible, and subject to the provisions of the Bengal Survey Act, 1875, preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village maps of the revenue survey, or other survey, if any, adopted under clause (*19*) (*b*) of section 3 as defining villages:

Ben. Act V of 1875.

and, where village maps prepared at such revenue or other survey exist, he shall not, without the sanction of the Board of Revenue, adopt any other area as such suit.

S. 115.—After final publication of record of rights tenant cannot get the presumption of S. 50.—55 C.L.J. 91.

Correction by Revenue-officer of mistakes in record-of-rights.

115B. Any Revenue-officer specially empowered by the Local Government in this behalf may, on application or of his own motion, within two years from the date of the certificate of the final publication of the record-of-rights under sub-section (*2*) of section 103A correct any entry in such record-of-rights which he is satisfied has been made owing to a *bona fide* mistake:

Provided that no such correction shall be made if an appeal affecting such entry has been filed under section 115C or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

115C. (*1*) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under sections 105 to 108 (both inclusive) and section 115B.

Appeals from decisions of Revenue-officers.

(*2*) An appeal shall lie to the Special Judge from the decisions of a Revenue-officer under sections 105 to 108, both inclusive, and section 115B, and the provisions of the Code of Civil Procedure, 1908, relating to appeals shall, as nearly as may be, apply to all such appeals.

Act V of 1908.

(*3*) Subject to the provisions of sections 100 to 103, section 107, section 108 and section 144 of, and Order XLII in Schedule I to the Code of Code of Civil Procedure, 1908, an appeal shall lie to the High Court from the decision of a Special Judge in any case under this section (not being a decision settling a rent) as if he were a Court subordinate to the High Court within the meaning of section 100 of that Code:

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under section 102 or settled under section 105 or section 108.

S. 115 (c).—Second appeal lies where the decision involves a fundamental question of tenancy, *e.g.*, assessment of rent according to the extent of area.—35 C.W.N. 19.

Where there was no question of fair and equitable rent but only the prayer for additional rent for additional area the prohibition contained in old sec. 109A (now S. 115C) was held inapplicable.—51 C.L.J. 569.

CHAPTER XI.

NON-ACCRUAL OF OCCUPANCY AND NON-OCCUPANCY RIGHTS AND RECORD OF PROPRIETORS' PRIVATE LANDS.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, lands acquired under the Land Acquisition Act, 1894, for the *Crown* or for any local authority or for a Railway Company, or lands

Saving as to certain lands.

I of 1894.

belonging to the *Crown* within a Cantonment, while such lands remained the property of the *Crown*, or of any local authority or Railway Company, or lands owned by the *Crown* or by any local authority which are used for any public work, such as a road, canal or embankment, or are required for the repair or maintenance of the same, or to a proprietor's private lands known as *khamar, nij, nij-jot, ziraat, sir* or *khamat* where any such land is held under a lease for a term of years or under a lease from year to year.

Note.—The word "*Crown*" has been substituted for "Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 116.—Plaintiff failing to prove that the lands in suit were his *zeraat*, the question whether defendants have acquired occupancy right does not arise.—35 C.W.N. 1217 (P.C.).

Power for Government to order survey and record of proprietor's private lands.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of section 116.

Power for Revenue-officer to record private land on application of proprietor or tenant.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to, and in accordance with, rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Procedure for recording private land.

119. When a Revenue-officer proceeds under section 117 or 118 the provisions of sections 103A, 103B, 106, 107, 108, 109 and 115C shall apply.

Rules for determination of proprietor's private land.

120. (*1*) The Revenue-officer shall record as a proprietor's private land—

(*a*) land which is proved to have been cultivated as *khamar, ziraat, sir, nij, nij-jot or khamat* by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village usage as proprietor's *khamar, ziraat, sir, nij, nij-jit* or *khamat*.

(*2*) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was, before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

(*2a*) Nothwithstanding anything contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue-officer shall not record any land as a proprietor's private land, unless it is proved to be such by satisfactory evidence of the nature described in sub-section (*1*) or sub-section (*2*).

(*3*) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XII.

Distraint.

121 to **142.** *Repealed by the Bengal Tenancy (Amendment) Act, 1298 (Ben. Act IV of 1928), s. 87.*

CHAPTER XIII.

JUDICIAL PROCEDURE.

Power to modify Civil Procedure Code in its application to landlord and tenant suits.

Act V of 1908.

143. (*1*) The High Court may, from time to time, with the approval of the *Provincial Government*, make rules, consistent with this Act, declaring that any portions of the Code of Civil Procedure, 1908, shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

(*2*) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure, 1908, shall apply to all such suits.

Note.—The words "*Provincial Government*" have been substituted for "Governor General in Council" by the Government of India (Adaptation of Indian Laws) Order, 1937.

Jurisdiction in proceedings under Act.

144. (*1*) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, 1908, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought and no suit between landlord and tenant as such shall be instituted in any Court other than a Court within the local jurisdiction of which the lands of the tenure or holding, as the case may be, are wholly or partly situated.

(*2*) A landlord may institute one suit in respect of the rent of more than one tenancy, if the tenancies, in respect of the rent of which the suit is brought, are held in similar right and equal status by the same tenant under him:

Provided that—

(*i*) the claim in respect of each tenancy shall be stated separately in the plaint;

(*ii*) separate decrees shall be made in respect of each tenancy;

(*ii*) the costs of the suit shall be apportioned by the Court in respect of each tenancy; and

(*iv*) separate court-fees shall be levied on the plaint in respect of the claim on account of each tenancy.

(*3*) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

S. 144.—Suit in respect of more than one tenancy—Lands whether must be within territorial jurisdiction of Court.—42 C.W.N. 375.

Naibs or *gumashtas* to be recognized agents.

145. Every *naib* or *gumashta* of a landlord empowered in this behalf by a written authority under the hand of the landlord, shall, for the purposes of every such suit or application, be deemed to be recognized agent of the landlord within the meaning of the Code of Civil Procedure, 1908, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made:

Act V of 1908.

Provided that notwithstanding anything contained in the Code of Civil Procedure, 1908, every such *naib* or *gumashta* may

verify the pleadings on behalf of the landlord and shall not be required to obtain the permission of the Court for the purpose of such verification.

Special register of suits.

Act V of 1908.

146. The particulars mentioned in rule 1 of Order VII in Schedule I to the Code of Civil Procedure, 1908, shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by rule 2 of Order IV in Schedule I to the said Code, be entered in a special register to be kept by each Civil Court, in such form as the local Government may, from time to time, prescribe in this behalf.

IX of 1872.

Joint and several liability for rent of co-sharer tenants in a tenure or holding.

146A. (*1*) Notwithstanding anything contained in the Indian Contract Act, 1872, all co-sharer tenants in a tenure or holding and their successors in interest shall be liable to the landlord jointly and severally for the rent payable to such landlord on account of the tenure or holding, whether such rent has accrued during the time of their own occupation or during the time of the occupation of their predecessors in interest.

(*2*) Notwithstanding anything contained elsewhere in this Act or in any other law, a decree for arrears of rent of a tenure or holding and a sale in execution of such decree shall be valid against all the co-tenants, whether they have been made parties defendant to the suit or not and against the holding in the manner provided in Chapter XIV, if the defendants to the suit represented the entire body of co-sharer tenants in the tenure or holding for the rent of which the suit was brought.

(*3*) The entire body of co-sharer tenants in a tenure or holding shall for the purposes of sub-section (*2*) be deemed to be represented by the defendants to the suit if such defendants include—

(*i*) all the co-sharer tenants in the tenure or holding whose homestead are situated in the village in which the tenure or holding is situated;

(*ii*) such of the co-sharer tenants in the tenure or holding, as have, at any time during the three years previous to that for the rent of which the suit is brought, made any payment of rent for the tenure or holding;

(*iii*) such co-sharer tenants who having purchased an interest in the tenure or holding, have given notice

of the purchase under sub-section (*3*) of section 12, or section 26C, as the case may be, or, who having succeeded to an interest by inheritance have given notice of their succession under section 15; and

(*iv*) all other co-sharer tenants in the tenure or holding whose names are entered in the landlord's rent-roll.

Note :—The words and figures "or section 26E" have been omitted by Bengal Act VI of 1938.

S. 146A.—Principle of representation discussed.—42 C.W.N. 755.

Procedure in rent suit against co-sharer tenants in a tenure or holding.

146B. (*1*) Notwithstanding anything contained in the Indian Limitation Act, 1908, any person who claims that he should have been joined as a co-sharer tenant defendant in a suit for the recovery of arrears of rent due in respect of a tenure or holding may at any time before the hearing of the suit has been commenced apply to be made a party defendant to the suit, and the Court shall consider his claim, and if it finds that he should have been so joined shall join him as a party defendant: IX of 1908.

Provided that if any such person at any time in the course of such suit pays into Court the full amount of the claim together with such costs as the Court may direct, the suit shall be dismissed and in any such case the provisions of section 171 shall apply.

(*2*) The provisions of sub-sections (*2*) and (*3*) of section 146A shall, so far as may be, apply in the case of a co-sharer tenant joined as a defendant under sub-section (*1*) of this section.

Successive rent-suits, V of 1908.

147. (*1*) Subject to the provisions of rule 1 of Order XXIII in Schedule 1 to the Code of Civil Procedure, 1908, where a landlord has instituted a suit against a *raiyat* for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after *nine* months from the date of the institution of the previous suit.

(*2*) *Nothing in sub-section* (*1*) *nor in rule 2 of Order II in Schedule I to the Code of Civil procedure, 1908, shall be deemed to prevent a landlord instituting a suit for a portion of the arrears of rent in respect of a holding, provided that—* Act V of 1908.

(*a*) *the claim in such suit shall be for the rent or the balance of the rent due for a complete agricultural year or years; and*

(*b*) *the plaint shall contain in addtion to the particulars specified in clause* (*b*) *of section 148, the total claim which might have been made on the date of the institution of the suit, and the period to which the said total claim relates.*

(*3*) *Where a subsequent suit for rent is instituted by a co-sharer landlord and has been consolidated with a previous suit for rent under the provisions of sub-section* (*4*) *of section 148A, the date of the institution of the subsequent suit shall, for the purposes of this section, be deemed to be the date of the suit which was first instituted and with which it was consolidated.*

Compromise of suits between landlord and tenant.

147A. (*1*) Notwithstanding anything contained in rule 3 in Order XXIII in Schedule I to the Code of Civil Procedure, 1908, if any suit between landlord and tenant as such is wholly or partly adjusted by agreement or compromise, the Court shall not order an agreement or compromise to be recorded and shall not pass a decree in accordance with such agreement or compromise unless it is satisfied, for reasons to be recorded in writing, that the terms of such agreement or compromise are such that, if embodied in a contract, they could be enforced under this Act:

Provided that, in the case of a suit instituted by the landlord to enhance the rent, the enhancement, if any, agreed upon may be decreed if the Court be satisfied, for reasons to be recorded in writing, that such enhancement is fair and equitable and in accordance with the rules laid down in this Act for the guidance of Courts in increasing rents.

(*2*) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise, unless and until it is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-*raiyat;* this affects the rights of the tenants of B. The Court must, under this sub-section, inquire whether B is a tenure-holder or a *raiyat* as defined in section 5. If the Court finds on the evidence that B is a *raiyat,* it may pass a decree in accordance with the agreement, but shall not do so if it finds that B is a tenure-holder.

S. 147A.—Non-compliance with formalities directed by the section does not render the decree a nullity.—118 I.C. 723 (F.B.); 12 Pat. 117.

Decree against recorded tenants, without joinder of recent transferees whose purchases were unknown to landlord.—41 C.W.N. 1173.

Regard to be had by Civil Courts to entries in record-of-rights.

147B. In all areas for which a record-or-rights has been prepared and finally published under sub-section (*2*) of section 103A, a Civil Court shall, in all suits between landlord and tenant as such, have regard to the entries in such record-of-rights relating to the subject-matter in disputes which may be produced before it, unless such entries have been proved by evidence to be incorrect; and, when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.

Procedure in rent suits.

148. The following rules shall apply to suits for the recovery of rent:—

Act V of 1908.

(*a*) sections 68 to 72 of the Code of Civil Procedure, 1908, and rules 1 to 13 of Order XI, rule 83 of Order XXI and rule 2 of Order XLVIIII in Schedule I to the said Code, and Schedule III to the said Code shall not apply to any such suit;

(*b*) the plaint shall contain, in addition to the particulars specified in rules 1, 2, 4, 5 and 6 and sub-rule (*2*) of rule 9 or Order VII in Schedule I to the Code of Civil Procedure, 1908, a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries in lieu thereof a description sufficient for identification. The plaint shall further contain a statement as to whether a record-or-rights has been prepared and finally published in respect of such land;

(*c*) where the suit is for the rent of land situated within an area for which a record-of-rights has been finally published, the plaint shall contain a statement of the serial number or numbers borne by the tenancy in the record-of-rights, and of the area and rental of the tenancy according to such record, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such statement:

Provided that, in all cases in which the Court admits a a plaint which does not contain such statement, the

Court shall, and in any other case in which it sees fit the Court may require the Collector to supply, without payment of fee, a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy:

Provided also that when the plaint contains such a statement, no statement of the situation, designation, extent and boundaries of the land held by the tenant as referred to in clause (*b*) shall be required except in so far as may be necessary for the purposes of clause (*d*);

(*d*) where any changes have occurred in the area, survey plots, or rent of the tenancy since the record-of-rights was finally published, the plaint shall further contain a statement showing the particulars of such changes;

(*e*) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only;

(*f*) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866;

XIV of 1866.

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered the Court may presume that the summons has been duly served;

(*g*) notwithstanding anything contained in the Code of Civil Procedure, 1908, or any rules made thereunder the plaintiff in a suit for recovery of arrear of rent shall not be required to supply any identifier for the purpose of serving the summons on the defendant or on any witness, and the serving officer shall serve the summons after due inquiry as to the identity of the person on whom, or the house or property where, the summons is served. The serving officer shall serve the summons in the presence of at least two persons and he shall, whenever possible, require the signature of those persons to

be endorsed on the original summons and, where he is unable to serve the summons, he shall, whenever possible, require the signatures of two persons of the locality to be so endorsed;

(*h*) notwithstanding anything contained in rule 4 (*3*) of Order XXXII in Schedule I to the Code of Civil Procedure, 1908, the Court may serve on the natural guardian of a minor defendant in a suit for arrears of rent a notice informing him that he will be treated as the guardian of such defendant in respect of such suit, unless he appears and objects within such time, not being less than fourteen clear days after the service of the notice, as may be specified in the said notice, and, in default of compliance with such notice, such natural guardian shall, unless the Court otherwise directs, be deemed to be the duly appointed guardian of the said minor defendant for all the purposes of such suit;

(*i*) a written statement shall not be filed without the leave of the Court, but the Court shall record its reasons for granting or refusing such leave;

(*j*) the rules for recording the evidence of witnesses contained in rule 13 of Order XVIII in Schedule I to the Code of Civil Procedure, 1908, shall apply, whether an appeal is allowed or not;

Act V of 1908.

(*k*) (*i*) notwithstanding anything contained in the Code of Civil Procedure, 1908, where a suit is instituted for rent entered in a record-of-rights finally published under Chapter X or where the rent is payable under a registered lease between the landlord and the tenant or where the annual rent payable has been decreed in a previous suit between the landlord and the tenant, the Court may, if the plaintiff desires to proceed under this section, issue a special summons in the prescribed form:

(*ia*) *service of the special summons referred to in sub-clause* (*i*) *shall ordinarily be effected by forwarding the summons by post in a letter with acknowledgment due addressed to the defendant and registered under Chapter VI of the Indian Post Office Act, 1898; and when a summons is so for-*

warded, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served;

(*ii*) when a special summons *referred to in sub-clause* (*i*) *has been served*, if the defendant fails to appear and defend the suit, the allegations in the plaint as regards the rent due shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons together with interest at the rate of six per cent. *per annum* from the date of the suit up to the date of payment and for costs with interest thereon:

Provided that the Court may at its discretion in any case in which it thinks fit, direct the plaintiff to adduce evidence in support of his claim:

Provided also that notwithstanding anything contained in section 13 of the Indian Evidence Act, 1872, where a decree has been passed under this clause, no statement in the plaint regarding the nature, area and incidents of the tenancy or regarding any liability other than the rent claimed as due shall be evidence against the tenant in any subsequent suit or proceeding;

I of 1872.

(*iii*) within seven days after the passing of a decree under sub-clause (*ii*) the Court shall send at the cost of the plaintiff to the defendant or defendants against whom the decree has been passed a registered postcard in the prescribed form stating the particulars contained in the decree;

and no action in execution of a decree shall be taken until a period of sixty days has elapsed since the date of the decree;

(*iiia*) *notwithstanding anything contained in section 34 of the Code of Civil Procedure, 1908, no interest shall be payable from the date of the decree on the aggregate sum decreed, if such aggregate sum is paid in full by the judgment-debtor within sixty days from the date of the decree;*

(*iv*) notwithstanding anything contained in rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908, or in section 153A of this Act, where

a decree is passed *ex parte* against a defendant under sub-clause (*ii*), he may apply to the Court by which the decree was passed for an order to set aside the decree and the Court, if it is satisfied that summons was not duly served and that there is *prima facie* evidence of a *bona fide* defence, may make an order setting aside the decree as against him or if necessary against all or any of the other defendants also;

(*l*) when any account-books, rent-rolls, collection-papers, measurement-papers, maps or extracts from records-of-rights have been produced by a party before any Court, and have been admitted in evidence in a suit pending therein,

copies of, or extracts from, such documents, may be certified by a duly authorized officer of such Court to be true copies or extracts without the payment of any court-fee, and such copies or extracts, may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to the party,

and thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals;

(*m*) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears;

(*n*) notwithstanding anything contained in sub-rule (*3*) of rule 11 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the Court shall not, unless for special reasons to be recorded in writing direct the decree-holder to file a copy of the decree or any fresh *vakalatnama* for the purpose of executing the decree:

Act V of 1908.

(*o*) notwithstanding anything contained in rule 16 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the

landlord's interest in the land has become and is vested in him.

S. 148.—Suit cannot be dismissed for non-mention of necessary formalities. Defendant may apply for or Court may insist on further and better particulars. 128 I.C. 785. As for instance, non-mention of plot of Record of rights.—11 Pat. 624; 139 I.C. 535.

148A. (*1*) A co-sharer landlord may institute a suit to recover the rent due to him in respect of his share in a tenure or holding, by making all the remaining co-sharer landlords parties defendant to the suit, and claiming that relief be granted to him in respect of his share of the rent against the entire tenure or holding.

Power to co-sharer landlord to sue for rent in respect of his share in a tenure or holding against the tenure or holding on making remaining co-sharers parties.

(*2*) On the plaint being admitted, the Court shall by summons in the prescribed form call upon the remaining co-sharer landlords aforesaid to join in the suit as co-plaintiffs for their shares of the rent due to them in respect of the tenure or holding up to the date of the institution of the suit.

(*3*) On the date named in the summons for his appearance or on any subsequent date fixed by the Court in this behalf, any co-sharer landlord, who has been summoned as defendant, may apply to be joined in the suit as a co-plaintiff, and on his paying the court-fee on the amount of his claim, he shall be joined as a co-plaintiff in respect of the rent claimed to be due to him up to the date of the institution of the suit.

(*4*) If it comes to the notice of the Court that any co-sharer landlord has before the service upon him of a summons under sub-section (*2*) instituted a separate suit to recover his share of the rent of the tenure or holding, the separate suit shall be consolidated with that brought under sub-section (*1*) and such co-sharer landlord shall be deemed to be a co-plaintiff and shall amend his plaint so as to claim the rent due to him up to the date of the institution of the suit under sub-section (*1*):

Provided that, if the Court is not competent to consolidate and try the suit, such suit shall be transferred to a Court of competent jurisdiction for consolidation and trial.

(*5*) The summons on all the defendants to the suit other than co-sharer landlords shall thereafter be served and the Court shall thereupon proceed to the trial of the suit.

(*6*) A decree passed by the Court for the rent claimed in a suit brought in accordance with the foregoing provisions of this section shall, so far as may be, specify separately the amounts payable to each co-sharer and shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

(*7*) When one or more co-sharer landlords, having obtained a decree in a suit framed under this section, applies or apply for the execution of the decree by the sale of the tenure or holding, the Court shall, before proceeding to sell the tenure or holding, give notice of the application of the execution to the other co-sharers.

(*8*) (*i*) In disposing of the proceeds of the sale in execution of the decree referred to in sub-section (*6*) the following rules, instead of those contained in section 73 of the Code of Civil Procedure, 1908, shall be observed,—

(*a*) there shall first be paid to the decree-holders the costs incurred by them in bringing the tenure or holding to sale;

(*b*) there shall in the next place be paid to the decree-holders the amount due to them under the decree in execution of which the sale was made;

(*c*) if there remains a balance after these sums have been paid, there shall be paid therefrom to the decree-holders and to any defendant landlords, who have not joined as plaintiffs, but have made application in this behalf within one month from the date of the confirmation of the sale, any rent which may have fallen due to them in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale, in proportion to their respective shares in the tenure or holding:

Provided that the Court shall issue a notice to the judgment-debtor or his pleader, if any, before ordering any such payment;

(*d*) the balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor on his

application unless the Court for reasons to be recorded in writing otherwise directs.

(*ii*) If the judgment-debtor disputes the right of the decree-holder or of the co-sharer landlord who has been made a party defendant to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute and the determination shall have the force of a decree.

(*9*) When a suit has been instituted under the provisions of sub-section (*1*), no co-sharer landlord, who has been made a party defendant thereto, and duly served with summons issued under sub-section (*2*), shall be entitled to recover, save as co-plainitff in that suit, any rent in respect of the tenure or holding for the period in suit or for any period previous thereto.

(*10*) Where a suit instituted under the provisions of sub-section (*1*) has been withdrawn with leave to bring a fresh suit, the procedure, remedies and disabilities hereinbefore provided by this section shall apply to such fresh suit when instituted and to the parties thereto.

(*11*) In the event of the holding or tenure not being sold as a result of a suit instituted under sub-section (*1*), nothing contained in rule 2 of Order II in Schedule I to the Code of Civil Procedure, 1908, shall preclude a co-sharer landlord who has been joined as plaintiff under sub-section (*3*) or is deemed to be a co-plaintiff under sub-section (*4*) from recovering by suit, rent and interest due to him and damages, if awarded, in respect of the tenure or holding for the period subsequent to the date of the institution of the suit under this section.

Act V of 1908.

(*12*) If the rent claimed in a plaint as amended under sub-section (*4*) is less than the rent claimed in the original plaint in the separate suit referred to in that sub-section, the balance of rent may be recovered under the provisions of clause (*c*) of sub-section (*8*) or of sub-section (*11*).

S. 148A.—Rate of rent in a co-sharer landlord's suit does not bind other co-sharer landlords joined as *pro forma defendants*.—33 C.W.N. 1221.

There is no equitable estoppel when a co-sharer landlord is impleaded in a suit under S. 148A.—58 Cal. 358.

In a suit for rent by one co-sharer landlord making another co-sharer party who pleaded previous purchase in execution of a rent decree there was a decision as to the validity of his co-sharer landlord's previous purchase. That decision will operate as *res judicata* between the same parties in a subsequent suit as to the validity of purchase. —59 Cal. 1250.

Assignee of a decree for arrars of rent who is not also landlord cannot execute the decree—35 C.W.N. 52; 54 C.L.J. 596; 37 C.W.N. 901.

Assignee of property with arrears of rent cannot execute the decree being substituted in the place of assignor who obtained rent decree in suit instituted before but decreed after assignment.—59 Cal. 297.

Procedure for service of notice upon natural guardian of a minor defendant is available only in the trial court. In the appellate court procedure of C. P. C. should be followed.—37 C.W.N. 921.

An assignee of the decree in S. 148 (o) includes an assignee by operation of law.—40 C.W.N. 589.

Althought no period of limitation has been prescribed for an application by a co-sharer landlord decree-holder to share in the sale-proceeds received in a sale held at the instance of another co-sharer landlord decree-holder under cl. (8) of S. 148A, such application must be made within a reasonable time. Where in a suit by a co-sharer landlord for rent another co-sharer landlord joined as a co-plaintiff and a decree was passed therein specifying the share of each co-sharer and an application for execution of the decree was made by one of the co-sharers and a sale having been held, the applicant co-sharer withdrew the money obtained at the sale in satisfaction of his claim and after one year and a half of the sale the other co-sharer applied for an order on the applicant to bring the money withdrawn by him into Court so that the same may be distributed rateably between the decree-holders. It was held that the application was barred by limitation.—41 C.W.N. 1248.

Payment into Court of money admitted to be due to third person.

149. (*1*) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff, but to a third person, the Court shall refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(*2*) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(*3*) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(*4*) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (*3*)

Payment into Court of money admitted to be due to landlord.

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Provisions as to payment of portion of money.

151. When a defendant is liable to pay money into Court under section 149 or 150 if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

Court to grant receipt.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

Appeals in rent suits.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

(*a*) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(*b*) the decree or order is passed by any other judicial officer specially empowered by the *High Court* to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested or has acted in the exercise of his jurisdiction illegally or with material irregularity, and may pass such order as the District Judge thinks fit.

Explanation.—A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to

land or to some interest in land as between parties having conflicting claims thereto.

S. 153.—No appeal lies from an order rejecting an application under Or. 9. r. 13 passed in a suit for rent valued at less than Rs. 50.—36 C.W.N. 540.

Right of appeal given under s. 174,(5) is controlled by Explanation to S. 153.

Fraud must be distinct and independent of irregularity in sale proceedings, otherwise no appeal lies from the order passed on such application.—36 C.W.N. 330.

Question of title may be raised in rent suit but it would be wise for the Court not to enter into it if it involves question of title.—53 C.L.J. 415.

Question of irregularity of sale is within the scope of Explanation to section. Appeals regarding cases of small values are barred under the Amended Act also.—34 C.W.N. 331.

No second appeal was competent when the amount involved in the suit was below the limit laid down in sec. 153.—37 C.W.N. 806.

No appeal lay when a question of the nature referred to in sec. 153 did arise. Whether cess claimed by plaintiff was payable direct to Government or to plaintiff was not a question referred to in sec. 153.—37 C.W.N. 806.

S. 153A.—Order accepting a surety bond in lieu of cash deposit may not be proper according to section but if at all made is not without jurisdiction.—56 C.L.J. 176.

S. 153B.—Munsif empowered to exercise final jurisdiction under S. 153 (*b*) B. T. Act set aside a sale on the ground of fraudulent suppression of processes but there was no finding of fraud which could be said to be independent of the irregularity of proceedings in publishing and conducting the sale. Held, that the irregularity found by munsif was covered by Explanation to S. 153 and no appeal lay.—38 C.W.N. 1183.

An appeal lies when there is conflict between the auction-purchaser and the purchaser from the tenant.—40 C.W.N. 95.

No appeal lies when munsif wrongly tries a small cause suit as an ordinary suit.—40 C.W.N. 698.

Rent decree for less than Rs. 50—appeal if lies when no question within the proviso to the section is decided.—40 C.W.N. 149.

153A. Every application for an order under rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908 to set aside a decree passed *ex parte*, or for a review of judgment, under section 114 and rule I of Order XLVII in Schedule I to the said Code in a suit between a landlord and tenant as such, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment;

Act V of 1908.

Deposit on application to set aside *ex parte* decree.

and no such application shall be admitted—

(*a*) unless the applicant has, at or before the time when the application is admitted, deposited in the Court to which the application is presented the amount, if any, which he admits to be due from him to the decree-holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct; or

(*b*) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary.

Date from which decree for enhancement takes effect.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court form fixing, for special reasons, a later date from which any such decree shall take effect.

Relief against forfeitures.

155. (*1*) A suit for the ejectment of a tenant, on the ground—

(*a*) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition on breach of whch he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(*2*) A decree passed in favour of landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(*3*) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (*2*).

(*4*) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse

or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

S. 155.—Landlord cannot get a decree for both ejectment and compensation.—33 C.W.N. 1224.

Breach of a condition does not automatically sever the relationship of a tenant. A suit for ejectment is not maintainable without notice. Notice must state the misuse complained of and ask the defendant to remedy it.—128 I.C. 790.

Erection of mosque for public worship in a plot of land comprised in an agricultural holding is such a misuse as would entitle the landlord to have a decree for ejectment.—38 C.W.N. 93.

Rights of ejected *raiyats* in respect of crops and land prepared for sowing.

156. The following rules shall apply in the case of every *raiyat* or under-*raiyat* ejected from a holding—

(*a*) when the *raiyat* or under-*raiyat* has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment;

(*b*) when the *raiyat* or under-*raiyat* has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;

(*c*) but a *raiyat* or under-*raiyat* shall not be entitled to retain possession of any land, or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to the local usage; and

(*d*) if the landlord elects under this section to allow a *raiyat* or under-*raiyat* to retain possession of the land, the *raiyat* or under-*raiyat* shall pay to the landlord, for the use and occupation of the land

during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

Power for Court to fix fair rent as alternative to ejectment.

157. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Application to determine incidents of tenancy.

158. (*1*) Subject to the provisions of section 111, the Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, namely:—

(*a*) the situation, quantity and boundaries of the land;

(*b*) the name and description of the tenant thereof (if any);

(*c*) the class or classes to which he belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, occupancy-*raiyat*, non-occupancy-*raiyat*, or under-*raiyat* with or without a right of occupancy and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure; and

(*d*) the rent payable by him at the time of the application.

(*2*) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Order XXVI in Schedule I to and section 78 of, the Code of Civil Procedure, 1908, by such Revenue-officer as the Local Government may authorize in that behalf by rule made under rule 9 of Order XXVI in Schedule I to the said Code.

Act V of 1908.

(*3*) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

CHAPTER XIIIA.

SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE BENGAL PUBLIC DEMANDS RECOVERY ACT, 1913.

158A. [Repealed by Bengal Act VI of 1938.]

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

158B. *Passing of tenure or holding sold in execution of decree or certificate. Rep. by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 99.*

General powers of purchaser as to avoidance of incumbrances.

159. (*1*) Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this Chapter as "protected interests," but with power to annul the interests defined in this Chapter as "incumbrances":

Provided as follows:—

(*a*) a registered and notified incumbrance within the meaning of this Chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;

(*b*) the power to annual shall be exerciseable only in manner by this Chapter directed.

(*2*) Notwithstanding anything contained in the Code of Civil Procedure, 1908, whenever a tenure or holding is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchase shall take effect from the date of confirmation of the sale.

Protected interests.

160. The following shall be deemed to be protected interests within the meaning of this Chapter:—

(*a*) any under-tenure existing from the time of the Permanent Settlement;

(*b*) any under-tenure recognized by the settlement proceedings of any current temporary settlement as

a tenure at a rent fixed for the period of that settlement;

(*c*) any lease of land whereon dwelling houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;

(*d*) any right of occupancy;

(*e*) the right of a non-occupancy-*raiyat* to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer;

(*f*) any right conferred on an occupancy-*raiyat* to hold at a rent which was a fair and reasonable rent at the time the right was conferred;

(*ff*) the right of a *raiyat* at fixed rates to hold at a fixed rent or rate of rent which has not been changed during twenty years; and

(*g*) any right or interest which the landlord at whose instance the tenure or holding or is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

S. 160C.—Right of an under-raiyat with occupancy right by custom is a protected interest.—36 C.W.N. 400.

A permanent tenure-holder who has no *mokurari* right may grant *mokurari* right to an under tenure-holder.—59 Cal. 26.

Interest of an under-raiyat with right of occupancy by custom before the amendment of 1928 is not a protected interest when the under-raiyati lease contravenes S. 85 of the Act.—38 C.W.N. 1209.

Meaning of "incumbrance" & "registered & notified incumbrance."

161. For the purposes of this Chapter—

(*a*) the term "incumbrance," used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in section 160;

(*b*) the term "registered and notified incumbrance," used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance

created by a registered instrument, of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided;

(*c*) the terms "arrears" and "arrear of rent" shall be deemed to include interest decreed under section 67 or damages awarded in lieu of interest under sub-section (*1*) of section 68.

Application for sale of tenure or holding.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under rule 11 (*2*) of Order XXI in Schedule I to the Code of Civil Procedure, 1908 for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the *pargana*, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

Act V of 1908.

Combined order of attachment and proclamation of sale to be issued.

163. (*1*) Notwithstanding anything contained in the Code of Civil Procedure, 1908, when the decree-holder makes the application mentioned in section 162, the Court if it admits the application under rule 17 of Order XXI in Schedule I to the said Code and orders execution of the decree as applied for, shall issue a combined order of attachment and proclamation in the prescribed form.

(*2*) The proclamation shall, in addtion to stating and specifying the particulars mentioned in rule 66 of Order XXI in Schedule I to the said Code announce—

(*a*) in the case of a tenure or a holding of a *raiyat* holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given with power to annul all incumbrances; and

(*b*) in the case of an occupancy-holding not held at fixed rates, that the holding will be sold with power to annul all incumbrances.

(*3*) Notwithstanding anything contained in sub-rules (*1*) and (*2*) of rule 67 in Order XXI in Schedule I to the said Code, the proclamation shall be published in the following manner—

(*a*) by beat of drum at some place on or adjacent to the land comprised in the tenure or holding ordered to be sold and by fixing up a copy thereof in a conspicuous place on such land,

(*b*) by affixing a copy thereof in a conspicuous place at the Court-house of the issuing Court,

(*c*) by sending in the prescribed form by registered post to the judgment-debtor a concise statement of the order of attachment and proclamation at the time of the issue of the proclamation, and

(*d*) in such other manner as may be prescribed.

(*4*) Notwithstanding anything contained in rule 68 of Order XXI in Schedule I to the said Code the sale shall not, without the consent in writing of the judgment-debtor, take place, until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

164. (*1*) When tenure or holding at fixed rates has been advertised for sale under section 163, it shall be put up to auction subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

(*2*) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

165. (*1*) If the bidding for a tenure or a holding at fixed rates put up to auction under section 164 does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the

sale and make a fresh proclamation in accordance with the procedure provided in sub-section (*3*) of section 163 announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(*2*) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

Sale of occupancy holding with power to avoid all incumbrances, and effect thereof.

166. (*1*) When an occupancy-holding not held at fixed rates has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

(*3*) The purchaser at a sale under this section may, in manner provided by section 167 and not otherwise, annul any incumbrance on the holding.

Procedure for annulling incumbrances, under sections 164, 165 or 166.

Ben. Act III of 1913.

167. (*1*) A purchaser having power to annul an incumbrance under sections 164, 165 or 166 or under the Bengal Public Demands Recovery Act, 1913, and desiring to annul the same, may, within one year from the date of the confirmation of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Court which passed the decree or the Revenue-officer who made the order, as the case may be, for sale of the property an application in writing requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(*2*) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(*3*) When an application for service of notice is made in manner provided by this section, the Court or Revenue-officer, as the case may be, shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(*4*) When a tenure or holding is sold in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears due in respect thereof, and there is on the tenure or

Ben. Act III of 1913.

holding a protected interest of the kind specified in section 160, clause (*c*), the purchaser may, if he has power under this Chapter or that Act to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

S. 167.—Mortgage of non-transferable occupancy holding, if an incumbrance.—41 C.W.N. 277.

Purchaser of patni taluk at rent sale, if may annual charge thereon after granting fresh patni to third party.—41 C.W.N. 111.

A mortgage not enforced or enforced by sale after the rent sale is an encumbrance. The definition of incumbrance in sec. 161 is not limited to transferable occupancy holdings.—39 C.W.N. 428.

An under-raiyat holding over on the expiry of the term is liable to eviction as a trespasser without notice.—33 C.W.N. 1207.

S. 167 speaks of notice and not "knowledge'. But knowledge may sometimes be sufficient to impute notice regard being had to the circumstances of the case.—59 Cal. 911.

Ch. XIV does not apply to a sale of a holding of an under-raiyat having no occupancy right by custom. Consequently, the auction-purchaser purchases only the right, title and interest of the defaulting under-raiyat and has no right to annul incumbrances. An under-raiyat under such under-raiyat has no *locus standi* to deposit the decretal amount either under sec. 174 (1) B. T. Act or Or. 21, r. 89, C. P. C.—39 C.W.N. 658.

Purchaser of a tenure in execution of a rent decree may either accept the under-tenure or avoid it within one year. If he does not elect to avoid it he must be deemed to have accepted the under-tenure.—35 C.W.N. 806.

Date of application to Collector and not the date of service of notice is to be looked to.—36 C.W.N. 844.

Power to direct that occupancy holdings be dealt with under sections 159 to 167 as tenures.

168. (*1*) The Local Government may, from time to time, by notification in the official gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of a decree for an arrear of rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

(*2*) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall,

for the purposes of sale under sections 159 to 167 of this Chapter, be treated in all respects as if they were tenures.

Rules for disposal of the sale-proceeds.

169. (*1*) In disposing of the proceeds of a sale under this Chapter other than a sale in execution of a decree in a suit instituted under sub-section (*1*) of section 148A the following rules, instead of those contained in section 73 of the Code of Civil Procedure, 1908, shall be observed, that is to say:—

Act V of 1908.

(*a*) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;

(*b*) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;

(*c*) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom the costs of the application under this section and any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale;

(*d*) the balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application unless the Court for reasons to be recorded in writing otherwise directs.

(*2*) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

Tenure or holding to be released from attachment only on payment into Court of amount of decree. with costs, or on confession of satisfaction by decree-holder.

170. (*1*) Rules 58 to 63 (both inclusive) of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

(*2*) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, in-

cluding the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(*3*) The judgment-debtor, or any person whose interests are affected by the sale, may pay money into Court under this section.

(*4*) The withdrawal of the amount deposited under this section or section 174 by the decree-holder landlord shall not operate as an admission of the tranferability of the tenure or holding sold in execution of the decree.

S. 170.—Withdrawal of deposit made by auction purchaser in mortgage execution, of decretal amount of a rent decree, by landlord though under protest, was held to amount to a recognition of the purchaser.—52 C.L.J. 153.

S. 170 does not bar a regular suit, though it may bar a claim of a third party, for a declaration of his title with a consequential relief for injunction restraining landlord from selling property in execution of a decree which is not binding upon him.—34 C.W.N. 821.

A person paying the decretal dues under S. 170 (3) is in the position of mortgagee and can retain possession until the debt has been discharged.—35 C.W.N. 678.

Under-raiyat's interest being voidable on sale is entitled to deposit. 56 Cal. 1064.

A doubt was expressed if one having occupancy right is a person interested in the sale within the provisions of this section or under Or. 21, r. 90.—35 C.W.N. 31.

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the tenure or holding.

Ben. Act III of 1913.

171. (*1*) When any person whose interests are affected by the sale of a tenure or holding advertised for sale under this Chapter or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bengal Public Demands Recovery Act, 1913, pays into Court the amount requisite to prevent the sale—

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at twelve *per centum per annum* and secured by a mortgage of the tenure or holding to him;

(*b*) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and

(*c*) he shall be entitled to posesssion of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(*2*) Nothing in this section shall affect any other remedy to which any such person would be entitled.

Inferior tenant paying into Court may deduct from rent.

172. When a tenure or holding is advertised for sale—

(*a*) under this Chapter, in execution of a decree against a superior tenant defaulting, or

(*b*) in execution of a certificate, signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting,

or when such sale is set aside under section 174—

and an inferior tenant pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Decree-holder may bid at sale; judgment-debtor may not.

Act V of 1908.

173. (*1*) Notwithstanding anything contained in rule 72 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the holder of a decree in execution of which a tenure or holding is sold under this Chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

(*2*) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(*3*) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it shall be paid by the judgment-debtor.

Application to set aside sale.

174. (*1*) Rules 89 and 90 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply in cases where a tenure or holding has been sold for arrears of rent due thereon, but in such cases the judgment-debtor or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Court to set aside the sale, on his depositing—

(*a*) for payment to the decree-holder, the amount recoverable under the decree up to the date when the deposit is made, with costs;

(*b*) for payment to the auction-purchaser, as penalty a sum equal to five *per cent.* of the purchase-money, but not less than one rupee.

(*2*) Where a person makes an application under sub-section (*3*) for setting aside the sale of his tenure or holding he shall not, unless he withdraws that application, be entitled to make or prosecute an application made under sub-section (*1*).

(*3*) Where a tenure or holding has been sold for arrears of rent due thereon, the decree-holder, the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within six months from the date of the sale, apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale:

Provided as follows:—

(*a*) no sale shall be set aside on any such ground unless the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud; and

(*b*) no application made by a judgment-debtor or any person whose interests are affected by the sale under this sub-section shall be allowed unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court, for reasons to be recorded by it in writing, that no such deposit is necessary.

(*4*) Rule 91 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply to any sale under this Chapter.

Act V of 1908.

(*5*) An appeal shall lie against an order setting aside or refusing to set aside a sale:

Provided that where the Court has refused to set aside the sale on the application of the judgment-debtor or any person whose interests are affected by the sale and the amount recoverable in execution of the decree is not in deposit in Court, no such appeal shall be admitted unless the appellant deposits such amount in Court.

S. 174.—Any fraud antecedent to decree cannot be a ground for setting aside sale under sec. 174 B. T. Act.—38 C.W.N. 1183.

Irregularities or inadequacy of price cannot affect consequences of sale held under B. T. Act.—59 Cal. 911.

Deposit made by J. Dr. though short was accepted through mistake by officer of Court as correct. Mistake being discovered J. Dr. paid the balance. It was held that previsions of S. 174 were complied with.—34 C.W.N. 250.

Decree-holder obtaining order of attachment, but attachment not actually effected before sale, is entitled to apply under sec. 174.—40 C.W.N. 1334.

Person obtaining order of attachment before judgment is not entitled to apply under sec. 174, cl. (1).—40 C.W.N. 759.

Sec. 174, cl. (1) if bars setting aside of sale on the footing of payment of decretal dues out of Court.—40 C.W.N. 1402.

Deposit of decretal dues if necessary before application under sec. 174 (3).—40 C.W.N. 526; 40 C.W.N. 531: 40 C.W.N. 528.

Right of appeal by decree-holder landlord, if lies against order refusing to set aside sale, but declaring the sale to be one in execution of money decree.—40 C.W.N. 182.

Amended S. 174 (5) has no retrospective operation.—34 C.W.N. 820; 1009.

An order made without giving required notice can be reviewed under Proviso of sec. 174A (2).—54 C.L.J. 490.

Where an under-raiyat has acquired occupancy right by custom at the date of a contract evidenced by registered lease on which plaintiff based his claim for ejectment, the contract could not under sec. 178. (*c*) take away the occupancy right of the under-raiyat.—57 C.L.J. 241.

An appeal presented on the last day of limitation without making the deposit required by sec. 174 (5) is incompetent.—42 C.W.N. 646.

An order dismissing for default an application under sec. 174 is appealable.—42 C.W.N. 612.

No appeal lies under sec. 174 (5) from an order under sec. 173 (3).—42 C.W.N. 585.

A person who has purchased the interest of an under-*raiyat* but whose purchase is not valid in law and who is not in possession of the lands has no right to apply under sec. 174 to have a sale of the occupancy holding set aside.—42 C.W.N. 1011.

Under proviso (b) of clause (3) of section 174, Bengal Tenancy Act, applicant for setting aside a sale, whether he is the J. Dr. or any other person whose interests are affected by the sale, is bound to deposit the decretal amount or to satisfy Court that no deposit is necessary. Such deposit can be called for by Court after and not before the hearing. Whether the deposited money can be used to satisfy the decree will depend upon the circumstance of each case.—38 C.W.N. 334.

No second appeal lies from an order made under sec. 174, setting aside or refusing to set aside a sale.—41 C.W.N. 993.

The deposit of the decretal amount contemplated by sec. 174, cl. 5, must be made before the appeal can be entertained at all.—41 C.W.N. 1299.

Deposit by mortgagee of occupancy holding who is also an unrecognised co-tenant.—41 C.W.N. 983; by purchaser of non-transferable occupancy holding.—41 C.W.N. 255.

Sale when to become absolute or be set aside, and return of purchase money in certain cases.

174A. (*1*) Where no application is made under sub-(*1*) of section 174 within thirty days from the date of sale or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.

(*2*) Where such application is made and allowed, and where in the case of an application under sub-section (*1*) of section 174, the deposit required by that sub-section is made within thirty days from the date of sale, the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(*3*) Where a sale is set aside under this section, the purchaser shall be entitled to an order against any person to whom the purchase money has been paid for its repayment with or without interest as the Court may direct.

(*4*) No suit to set aside an order under this section shall be brought by any person against whom such order is made.

(*5*) Notwithstanding anything contained in this section, an application may be made under sub-section (*3*) of section 174 to set aside the sale, and where such application is allowed the order made under sub-section (*1*) confirming the sale shall be deemed to be cancelled.

175. (*Registration of certain instruments creating incumbrances.*) *Rep. by the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930), s. 13.*

Notification of incumbrances to landlord.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Power to create incumbrances not extended.

177. Nothing contained in this Chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

CHAPTER XV.

CONTRACT AND CUSTOM.

Restrictions on exclusion of Act by agreement.

178. (*1*) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

(*a*) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(*b*) shall take away an occupancy-right in existence at the date of the contract, or

(*c*) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(*d*) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them, or

(*e*) shall entitle a landlord to recover as rent, from a tenant whose rent is a share, as opposed to a fixed quantity of produce, produce in excess of half the gross produce of the holding for the year for which the rent is claimed, or

(*f*) shall take away or limit the rights of an under-*raiyat* as against his immediate landlord, as set forth in Chapter VII, or

(*g*) shall take away or limit the right of an occupancy-*raiyat* to transfer his holding or any share or portion thereof in accordance with the provisions of sections 26B to 26G, or

(*h*) shall take away or limit the rights of occupancy-*raiyats* in trees on their holdings, as provided in section 23A, or

(*i*) shall affect the provisions of section 67 relating to interest payable on arrears of rent.

(*2*) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act, shall prevent a *raiyat* from acquiring in accordance with this Act, an occupancy-right in land.

(*3*) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

(*a*) prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land;

(*b*) take away or limit the right of an occupancy-*raiyat* to use land as provided by section 23;

(*c*) take away the right of a *raiyat* or *under-raiyat* to surrender his holding in accordance with section 86;

(*d*) take away the right of an occupancy-*rayat* to sub-let subject to, and in accordance with, the provisions of this Act;

(*e*) take away the right of a *raiyat* to apply for a reduction of rent under section 38 or section 52;

Provided as follows:—

(*i*) nothing in this section shall affect the terms or conditions of a lease granted *bona fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;

(*ii*) when a landlord has reclaimed waste-land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a *raiyat*, nothing in this Act shall affect the terms of any contract whereby a *raiyat* is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a *raiyat;*

(*iii*) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of horticultural or orchard land with agricultural crops.

Explanation.—The expression "horticultural land," as used in proviso (*iii*), means garden land, in the occupantion of a proprietor or permanent tenure-holder, which is used *bona fide* for the cultivation of flowers or vegetables, or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not for profit or sale.

S. 178—has no retrospective effect.—A.I.R. 1933 Cal. 321,

Permanent *mukarrari* leases.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent *mukarrari* lease on any terms agreed on between him and his tenant:

Provided that such proprietor or holder shall not be entitled to recover interest at a rate exceeding that set forth in section 67 or anything that is an *abwab* or the recovery of which is illegal under the provisions of section 74 or sub-section (*3*) of section 77.

Utbandi, *char* and *diara* lands.

180. (*1*) Notwithstanding anything in this Act, a *raiyat*—

(*a*) who, in any part of the country where the custom of *utbandi* prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(*b*) who holds land of the kind as *char* or *diara*, shall not acquire a right of occupancy—

in case (*a*), in land ordinarily held under the custom of *utbandi* and for the time being held under that custom, or

in case (*b*), in the *char* or *diara* land,

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(*2*) Chapter VI shall not apply to *raiyats* holding land under the custom of *utbandi* in respect of land held by them under that custom.

(*3*) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, *or, after hearing both landlord and tenant, of his own motion* declare that any land has ceased to be *char* or *diara* land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

S. 180.—'Land' means entire area of tenancy, cultivated as well as fallow, and rent paid for both must be considered in calculating average amount.—35 C.W.N. 19.

Fixing of uniform annual money rent in respect of *utbandi* lands.

180A. (*1*) Notwithstanding anything contained in section 180, when a *raiyat* who is or who but for the operation of section 180 in respect of land held under the custom of *utbandi*

would have been, a settled *raiyat* of the village, holds or has held under the custom of *utbandi*, or under any form of tenancy locally known as *utbandi* land (hereinafter referred to as *utbandi* land), either the landlord or the *raiyat* may apply to have a uniform annual money rent determined for the land.

(*2*) The application shall include at the discretion of the applicant either—

(*a*) all *utbandi* lands held in the same village by the same *raiyat* under the same landlord in which the *raiyat* has acquired a right of occupancy whether under the provisions of section 180 or otherwise, or

(*b*) all the lands held in the same village under the same landlord by the *raiyat* which the *raiyat* or any deceased person whose heir he is, has cultivated as *utbandi* land at any time during the preceding period of six years if he or the said deceased person is the last person to have cultivated the land and has not or had not acquired occupancy-rights therein, or

(*c*) both.

(*3*) Subject to the provisions of sub-section (*2*), a single application may be made by a landlord in respect of lands held as *utbandi* lands in the same village by one or more *raiyats* under him and a joint application may be made by two or more *raiyats* in respect of lands held by them as *utbandi* lands in the same village under the same landlord.

(*4*) The application may be made to the Collector or to a Subdivisional Officer or to a Revenue-officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X or to any other officer specially authorized by the Local Government.

(*5*) The case may be determined by the officer who receives the application, or the Collector or the Settlement Officer may transfer it for disposal to some other officer competent under sub-section (*4*) to receive applications.

(*6*) The officer receiving the application or the officer to whom the case is transferred as the case may be, shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for the determination of the case.

If the immediate landlord or the *raiyat* is a temporary tenure-holder or *ijaradar*, the officer receiving the application shall also give notice to the superior landlord in the lowest degree, who is a proprietor or permanent tenure-holder.

(*7*) If the application is made in respect of lands in which the *raiyat* has not acquired occupancy-rights, the officer may reject it in respect of such lands, if he is satisfied in view of all the circumstances of the case that it is unreasonable to grant it:

Provided that a refusal shall be no bar to proceedings being again taken under this section after five years from the date of refusal if in the opinion of the officer who then receives the application the circumstances have in the meantime changed.

(*8*) If the application is not rejected, the officer shall then determine the sum to be paid as a uniform annual money rent, and also in the case of lands in which the *raiyat* has not acquired occupancy-rights, a premium to be paid to the landlord, and he shall order that the *raiyat* shall, in lieu of paying the rent for the land as *utbandi* land, pay the sum so determind and the premium, if any:

Provided that in any case in which an order fixing a uniform annual money rent is passed *ex parte* the opposite party may within one month of the date of such order or, when the notice has not been duly served, within one month of the date of his knowledge of such order apply to the officer by whom the order was passed for an order to set it aside and, if he satisfies the officer that the notice of the application under sub-section (*1*) was not duly served on him or that he was prevented by any sufficient cause from appearing when the case was determined, the officer shall set aside the order and shall appoint a day for the determination of the case. No order shall be set aside on application made under this proviso unless notice thereof has been served on the respondent thereto.

(*9*) In making the determination of the sum to be paid as rent, the officer shall calculate the average of the amount that was actually paid or payable as rent for the land for the previous six years and shall ordinarily declare the same as the sum to be paid as rent:

Provided that the officer may also take into consideration—

(*a*) the average money rent payable by occupancy-*raiyats* for land of a similar description and with similar advantages in the vicinity;

(*b*) the average rates for lands of a similar description and with similar advantages in the vicinity held as *utbandi* lands;

(*c*) the average money rent payable for lands of a similar description and with similar advantages in the vicinity by *raiyats* who formerly paid their rent for those lands as *utbandi* lands but whose rents have been converted into uniform annual money rents whether under this section or by agreement or otherwise;

(*d*) the charges incurred in accordance with custom by the landlord in respect of the irrigation and drainage of the *utbandi* lands and the arrangements made for continuing those charges;

(*e*) the rules laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rents on account of the holdings of occupancy-*raiyats;*

(*f*) any sum agreed to by the parties to be paid as money rent:

Provided that the officer shall in no case determine a rent which is unfair or inequitable.

(*10*) The premium to be paid to the landlord in the case of lands in which the *raiyat* has not acquired occupancy-rights shall be three times the rent, or, if the application is made under clause (*c*) of sub-section (*2*), three times the portion of the rent determined under sub-section (*8*) on account of such lands.

(*11*) If the immediate landlord of the *raiyat* is a temporary tenure-holder or *ijaradar* the officer shall apportion the premium payable under sub-section (*10*) between the said temporary tenure-holder or *ijaradar* and his superior landlord of the lowest degree who is a proprietor or permanent tenure-holder in such manner as may appear fair and reasonable to the officer in view of all the circumstances of the case, and any sum so awarded to the said superior landlord shall be recoverable by him from the temporary tenure-holder or *ijaradar* or his successor in interest as an arrear of rent but shall not be recoverable by the superior landlord from the *raiyat.*

(*12*) The order shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary recorded in writing, take effect from the

beginning of the agricultural year next after the date on which it is made.

(*13*) The officer shall fix the date (not being more than one month from the date of the order) by which the premium shall be paid or he may, on the application of the *raiyat,* order that the premium shall be paid by instalments not exceeding three in number, that the first instalment shall be paid at the beginning of the agricultural year in which the rent settled under sub-section (*8*) takes effect and that one of the remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

(*14*) *The premium or any instalment thereof shall be recoverable as rent, and interest shall not be payable on any instalment in respect of which default has not been made.*

(*15*) Any order made under this section shall be subject to appeal in the manner provided in section 115C unless the application has been made in the course of proceedings under Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply.

(*16*) An application made under sub-section (*1*) may be amended if it appears at any time to the officer prior to the issue of the order under sub-section (*7*) or sub-section (*8*) or to the appellate or revisional Court that it does not comply with the provisions of sub-section (*2*) but that it can be brought into conformity with that sub-section. Such amendment may be made either on the initiative of the parties or either of them or of the officer or Court but it shall not be made unless prior notice thereof is given to the parties, and, if such amendment is made, it shall be made only on such terms or conditions as to such officer or Court shall appear to be just.

(*17*) Notwithstanding anything contained elsewhere in this Act or in any other law, no suit shall be brought or application made in any Court in respect of any order passed under this section, save as is provided in this section.

Lands in respect of which a uniform annual money rent has been fixed under section 180A to cease to be *utbandi* lands.

180B. Whenever an order under section 180A is passed determining a uniform annual money rent for any lands, such lands shall cease to be held as *utbandi* lands with effect from the date from which the new rent takes effect, and the tenant shall hold them as an occupancy-*raiyat* from the date of the order.

Period for which rent fixed under section 180A to remain unaltered.

180C. (*1*) Where a uniform annual money rent has been fixed under section 180A, the said rent shall not, except on the ground of a landlord's improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in clause (*a*) of sub-section (*1*) of section 38.

(*2*) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (*12*) of section 180A.

Saving as to service-tenures.

181. Nothing in this Act shall affect any incident of a *ghatwali* or other service-tenure, or in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

S. 181—does not debar a raiyat holding under a tenure-holder whose tenure is a service tenure, from acquiring occupancy right against his landlord.—38 C.W.N. 365.

A person holding agricultural lands as a service tenure cannot acquire any occupancy right therein.—39 C.W.N. 581.

Homesteads.

182. When a *raiyat* or an under-*raiyat* holds his homestead otherwise than as part of his holding within the same village or any village contiguous to that village, his status in respect of his homestead shall be that of a *raiyat* or an under-*raiyat* according to the status of the landlord of the homestead, and the incidents of his tenancy of such homestead shall be governed by the provisions of this Act applicable to *raiyats* or under-*raiyats*, as the case may be.

S. 182—does not apply when tenant had no raiyati holding at the inception, and even when he had, the tenancy had a distinct and definite origin although the terms may not be capable of proof.—37 C.W.N. 473.

Right of occupancy acquired in homestead land—subsequent sale of agricultural land—effect of.—40 C.W.N. 182.

Settling of homestead land only out of homestead and agricultural lands, if governed by B. T. Act or by the T. P. Act.—40 C.W.N. 86.

Sec. 182 applies to the case of a homestead situated within a municipal area which has not been excluded by a notification under sec. 1 (3) (iii) of the Bengal Tenancy Act.—41 C.W.N. 1327.

Where a tenant holding a homestead in a village subsequently acquired an under-raiyati holding with occupancy right in the same village but the acquisition was before the coming into operation of the B. T. Amendment Act, 1928, it was held that sec. 182, as amended by B. T. Act, 1928, applied to the case—41 C.W.N. 405.

B. T. Act has no application when subordinate holding was created before the passing of the Act and the tenant was not an agriculturalist.—37 C.W.N. 471.

Saving of custom.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

CHAPTER XVI.

LIMITATION.

Limitation in suits, appeals and applications in Schedule III.

184. (*1*) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that Schedule for them, respectively; and every such suit or appeal instituted, and application made, after the period of limitation so provided shall be dismissed although limitation has not been pleaded.

(*2*) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

S. 184.—Where the matter has been investigated, High Court cannot but look to the question of limitation although it was not pleaded in the lower Court.—35 C.W.N. 1143.

Portions of the Indian Limitation Act not applicabel to such suits, etc., mentioned in Schedule III.

185. Sections 6, 7, 8 and 9 and sub-section (*2*) of section 29 of the Indian Limitation Act, 1908, shall not and, subject to the provisions of this Chapter, the remaining provisions of that Act, shall apply to all suits, appeals and applications specified in Schedule III annexed to this Act.

S. 185.—Ss. 19 and 20, Limitation Act, apply to cases under Schedule III of B. T. Act.—36 C.W.N. 833.

Provisions of S. 185 are not exhaustive and are to be read with reference to those of S. 29 (2) Limitation Act.—37 C.W.N. 927.

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

Penalties for illegal interference with produce.

186. (*1*) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

(*a*) distrains or attempts to distrain the produce of a tenant's holding, or,

(*c*) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

Act XLV of 1860.

(*2*) Any person who abets, within the meaning of the Indian Penal Code, the doing of any act mentioned in sub-section (*1*), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Damages for denial of landlord's title.

Damages for denial of landlord's title.

186A. (*1*) When, in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

(*2*) The amount of damages decreed under sub-section (*1*), together with any interest accruing due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenure or holding of the tenant; and the landlord may execute such decree for damages and interest, either as a decree for a sum of money, or, in any of the modes in which a decree for rent may be executed.

Agents and representatives of landlords..

Power for landlord to act through agent.

187. (*1*) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(*2*) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purpose of this Act as if it had been served on, or given to, the landlord in person.

(*3*) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

Action to be taken collectively by co-sharer landlords or by their common agents except in certain cases.

188. (*1*) Subject to the provisions of section 148A where two or more persons are co-sharer landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together or by an agent authorized to act on behalf of both or all of them:

Provided that one or more co-sharer landlords, if all the other co-sharer landlords are made parties defendant to the suit or proceeding in manner provided in sub-sections (*1*) and (*2*) of section 148A and are given the opportunity of joining in the suit or proceeding as co-plaintiffs or co-applicants, may—

(*i*) [Omitted by Bengal Act VI of 1938.]

(*ii*) bring a suit for enhancement of the rent of a tenure under section 7 or of a holding under section 30, or for alteration of rent on account of alteration in area under section 52,

(*iii*) bring a suit for ejectment of a tenant on the grounds specified in section 10, clause (*b*) of section 18, section 25, or clause (*a*), clause (*b*), or clause (*c*) of section 44, or in accordance with the provisions of section 48C or section 66,

(*iv*) make applications as regards improvements under sections 78, 80 and 81.

(*v*) apply for measurement under sections 90 and 91,

(*vi*) file an application under section 105,

(*vii*) bring a suit under section 106,

(*viii*) apply for record of private lands under section 118,

(*ix*) apply for the determination of the incidents of a tenancy under section 158,

(*x*) apply to the Collector for a declaration under sub-section (*3*) of section 180.

(*2*) Any decree passed or order made in a suit of proceeding in which the conditions set forth in sub-section (*1*) of this section have been complied with, shall have the effect of a decree passed or order made, on the application of the sole landlord or the whole body of landlords, and shall take effect as regards the whole tenure or holding, as the case may be:

Provided that where a suit is brought under section *7* or section 30 for enhancement of rent, or under section 52 for alteration of rent, or where an application is made under section 105 by a co-sharer landlord for settlement of rent, the Court or Revenue-officer, as the case may be, when the rent has been fixed or settled, shall distribute any amount by which the rent has been increased or reduced between the co-sharer landlords of the tenancy in proportion to their respective shares in such tenancy whether they have or whether they have not joined as plaintiffs or applicants, and such distribution shall be binding on all the co-sharer landlords as if they had all sued or applied for the same, and for the purposes of any appeal, application or suit in regard to such distribution they shall be deemed to have sued or applied under sub-section (*1*) of this section together with co-sharer plaintiff or applicant.

S. 188.—Co-sharer landlord cannot maintain an application under sec. 26F without making other co-sharers parties.—37 C.W.N. 89.

S. 188 (1)—is the governing section and therefore in an application for premption it is necessary that all co-sharers landlords should be either as applicants or as defendants.—38 C.W.N. 634.

Co-sharer landlord can sue for assessment of fair and equitable rent making other co-sharers defendants.—54 C.L.J. 74.

Co-sharer landlord cannot maintain an application under sec. 105 B. T. Act on any of the grounds mentioned in sec. 30 of the Act.—58 Cal. 159.

All landlords join in the notice to determine the tenancy but subsequently some of them compromise. Still ejectment suit is maintainable by the rest.—140 I.C. 14.

When a suit for additional rent for additional area is brought by some of the co-sharer landlords, not under sec. 52 of the B. T. Act but on a *kabuliyat* which is executed only in their favour, sec. 188 of the B. T. Act does not apply and the claim is maintainable even without co-sharers joining as plaintiffs.—39 C.W.N. 538.

188A. (*Procedure in suits by joint landlords.*) *Rep. by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 120.*

Rules under Act.

Power to make rules regarding procedure, powers of officers and services of notices.

189. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act,—

(*1*) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(*a*) any power exercised by a Civil Court in the trial of suits;

(*b*) power to enter upon any land, and to survey, demarcate and make a map of the same and any power exercisable by any officer under the Bengal Survey Act, 1875; and

(*c*) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of soil; and

Ben. Act V of 1875.

(*2*) to prescribe the forms to be used, and the mode of service of notices issued, under this Act, where no form or mode is provided in this or any other Act;

(*3*) to prescribe the manner in which the landlord's fee shall be transmitted to the landlord;

(*4*) to prescribe the authority by whom the fees deposited under sections 12, 13, 15, 17 *and* 18 may be declared to be forfeited, and the mode in which such fees, when so forfeited, shall be dealt with; *and*

(*5*) to provide for all or any of the following matters, namely—

(*a*) the manner of publication of—

(*i*) notifications under sub-section (*3*) of section 1;

(*ii*) price lists under sub-section (*3*) of section 39;

(*iii*) notices under sub-section (*2*) of section 87;

(*iv*) the draft record-of-rights under sub-section (*1*) of section 103A;

(*v*) the record-of-rights under sub-section (*2*) of section 103A;

(*vi*) Tables of Rates under sub-section (*2*) of section 104B;

(*vii*) the draft Settlement Rent-roll under sub-section (*1*) of section 104E;

(*viii*) proclamation under clause (*d*) of sub-section (*3*) of section 163; and

(*ix*) the rules made by authorities other than the Local Government or the High Court under sub-section (*2*) of section 190;

(*b*) the manner of payment of the landlord's fee under sub-section (*4*) of section 12;

(*c*) the amount of fees—

(*i*) for processes referred to in sub-section (*2*) of section 12, *in sub-section (1), (2), (3), (4) and (5) of section 26C, in sub-section (6) of section 26G, in sub-section (2) of section 85A and in sub-section (2)of section 88;*

(*ii*) for *service of notice* referred to in *sub-section* (*1*) of section *13; and*

(*iii*) *referred to in sub-section (2) of section 61 and in sub-section (6) of section 88;*

(*d*) the amount of the cost of transmission of fees or other monies;

(*e*) the manner of payment or tender of rent by postal money-order;

(*f*) the manner of verification of applications under sub-section (*2*) of section 80;

(*g*) the information to be contained in the applications referred to in sub-section (*2*) of section 80;

(*h*) the form of the register referred to in clause (*a*) of sub-section (*2*) of section 99A and the particulars to be therein entered;

(*i*) the manner of making a survey and preparing a record-of-rights under sub-section (*4*) of section 101;

(*j*) the particulars referred to in the proviso to clause (*j*) of section 102;

(*k*) the period of publication of the draft record-of-rights under sub-section (*1*) of section 103A and of the draft Settlement Rent-roll under sub-section (*1*) of section 104E;

(*l*) the manner in which objections shall be considered and disposed of under sub-section (*2*) of section 103A;

(*m*) the empowering of the "confirming authority" referred to in sub-section (*4*) of section 104B;

(*n*) the superior Revenue authority referred to in section 104G;

(*o*) the stamp to be borne by applications under sub-section (*1*) or sub-section (*2*) of section 105;

(*p*) [Omitted by Bengal Act VI of 1938.]

(*q*) any other matter required or permitted under this Act to be prescribed.

S. 189.—Effect of Bengal Govet. rules discussed.—34 C.W.N. 999.

Process fees for notices on Respondents in appeal before Special Judge must be paid according to the scale of fees prescribed by High Court Rules framed under S. 20, Court Fees Act.—35 C.W.N. 253.

Procedure for making, publication and confirmation of rules.

190. (*1*) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(*2*) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may, in its opinion, be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

(*3*) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(*4*) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*5*) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(*6*) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be

amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily-settled districts.

Settlement of rent of land held in a district not permanently settled.

191. Where the area comprised in a tenure or holding is situate in an estate not subject to a subsisting permanent settlement and when,

(*a*) land-revenue is for the first time made payable in respect of the land, or

(*b*) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

nothing in this Act or in any lease or contract made after the passing of the Bengal Tenancy Act, 1885, shall entitle any tenant to hold his tenancy free of rent or at a particular rent, unless in the case of a fresh settlement made under clause (*b*) the right so to hold beyond the term of the previous settlement has been expressly recognised at the previous settlement by a Revenue authority empowered by *Provincial* Government to make definitively or confirm settlements, and the Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, or of his own motion, fix a fair and equitable rent for all grades of tenants in accordance with the principles laid down in sections 6, 7, 8, 9, 27 to 36, 38, 39, 43, 50 to 52 and 180:

Provided that, notwithstanding anything contained in sub-section (*3*) of section 7 he may divide the minimum profit of ten *per centum* provided for in that sub-section among two or more grades of tenure-holders if such exists.

192. (*Power to alter rent in case of new assessment of revenue.*) *Amalgamated with section 191 by the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), s. 122.*

Rights of pasturage, etc.

Rights of pasturage, forest-rights, etc.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-right, rights over fisheries and the like.

Saving for conditions binding on landlords.

Tenant not enabled by Act to violate conditions binding on landlord.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition:

Provided that this section shall not apply to a *raiyat* or an under-*raiyat* doing any act in exercise of the rights conferred by this Act upon *raiyats* or under-*raiyats*, as the case may be.

Savings for special enactments.

Savings for special enactments.

195. Nothing in this Act shall affect—

(*a*) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

(*b*) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue authorities;

(*c*) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;

(*d*) any enactment relating to the partition of revenue-paying estates;

(*e*) *any enactment relating to* patni-*tenures is so far as it relates to those tenures, except that—*

(*i*) *the provisions of section 67 and of clause* (*i*) *of sub-section* (*1*) *of section 178 shall apply to all* patni-*tenures, and*

(*ii*) *the expression* 'khudkast raiyat *or resident and hereditary cultivator' in sub-section* (*3*) *of section 11 of the Bengal Patni Taluks Regulation, 1819, shall be deemed to include all raiyats having a right of occupancy; or*

(*f*) any other special or local law not repealed either expressly or by necessary implication by this Act.

Protection of certain acts.

Protection in certain cases for acts done.

195A. No suit or other proceeding shall be instituted against the *Crown* or against any officer of the *Crown* in respect of anything done by the registering officer, the Collector or the Court in regard to the receiving, distribution or payment of the landlord's fee or the landlord's transfer fee:

Provided that nothing in this section shall prevent any person entitled to receive the amount of any such landlord's fee or landlord's transfer fee or any portion thereof from recovering the same from a person to whom it has been paid by the Collector or the Court.

Note.—The word "Crown" has been substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

196. (*Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.*) *Rep. by the Bengal Tenancy* (*Amendment*) *Act, 1928* (*Ben. Act IV of 1928*), *s. 125.*

SCHEDULE I.

(See section 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
8 of 1793 . . .	A regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the public revenue payable from the lands of the *zamindars*, independent *talukdars* and other actual proprietors of land in Bengal, Bihar and Orissa, passed for those Provinces, respectively, on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
12 of 1805 . . .	A regulation for the settlement and collection of the public revenue in the *zila* of Cuttack, including the *parganas* of Pataspur, Kamardachor and Bhograi, at present included in the *zila* of Midnapore.	Section 7.
5 of 1812 . . .	A Regulation for amending some of the rules at present in force for the collection of the land-revenue.	Sections 2, 3, 4, 26 and 27.
18 of 1812 . . .	A Regulation for explaining section 2, Regulation 5, 1812, and rescinding sections 3 and 4, Regulation 44, 1793. and sections 3 and 4, Regulation 50, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
11 of 1825 . . .	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "Nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
6 of 1862 . . .	An Act to amend Act 10 of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
4 of 1867 . . .	An Act to explain and amend Act 6 of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
8 of 1869 . . .	An Act to amend the Procedure in suits between landlords and tenants.	The whole Act.
8 of 1879 . . .	An Act to define and limit the powers of Settlement-officers.	The whole Act.
	Act of the Governor General in Council.	
10 of 1859 . . .	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

SCHEDULE II.

PARTICULARS OF RECEIPT AND OF STATEMENTS OF ACCOUNT.

(See sections 56 and 57.)

Particulars of receipt. (landlord's portion).

1. Serial number of receipt.
2. Name of village, pargana, thana.
3. (*a*) Name of the estate and *tauzi* number to which the land appertains, and
   (*b*) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,—
   (*a*) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it.
   (*b*) Area.
   (*c*) Annual rent (cash or fixed quantity of produce or both as the case may be).
   (*d*) Annual road and public works cesses.
   (*e*) *Jalkar*, *bankar* and *phalkar*.
7. Amount paid, specifying for which of the items (*c*), (*d*) and (*e*) and for which year and *kist*.
8. Date of payment.
9. Signature of landlord or his authorized agent.

Particulars of receipt. (tenant's portion).

1. Serial number of receipt.
2. Name of village, pargana, thana.
3. (*a*) Name of the estate and *tauzi* number to which the land appertains, and
   (*b*) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,—
   (*a*) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it.
   (*b*) Area.
   (*c*) Annual rent (cash or fixed quantity of produce or both as the case may be).
   (*d*) Annual road and public works cesses.
   (*e*) *Jalkar*, *bankar* and *phalkar*.
7. Amount paid, specifying for which of the items (*c*), (*d*) and (*e*) and for which year and *kist*.
8. Date of payment.
9. Signature of landlord or his authorized agent.

Particulars of statement of account. (Landlord's portion.)

1. Serial number of receipt.
2. Name of village, pargana, thana.
3. (*a*) Name of the estate and *tauzi* number to which the land appertains, and

   (*b*) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,—

   (*a*) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it.

   (*b*) Area.

   (*c*) Annual rent (cash or fixed quantity of produce or both as the case may be).

   (*d*) Annual road and public works cesses.

   (*e*) *Jalkar, bankar* and *phalkar.*
7. Amount due at the beginning of the year:—

   (*a*) under each of the items (*c*), (*d*) and (*e*) for which years; and

   (*b*) as interest on above.
8. Amounts paid during the years against each of the above dues, with dates of payment and serial number of the rent-receipt granted.
9. Amounts remaining due at the end of the year.
10. Date of the statement of account.
11. Signature of landlord or his authorized agent.

Particulars of statement of account. (Tenant's portion.)

1. Serial number of receipt.
2. Name of village, pargana, thana.
3. (*a*) Name of the estate and *tauzi* number to which the land appertains, and

   (*b*) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,—

   (*a*) Serial number of the landlords' rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it.

   (*b*) Area.

   (*c*) Annual rent (cash or fixed quantity of produce or both as the case may be).

   (*d*) Annual road and public works cesses.

   (*e*) *Jalkar, bankar* and *phalkar.*
7. Amount due at the beginning of the year:—

   (*a*) under each of the items (*c*), (*d*) and (*e*) for which years; and

   (*b*) as interest on above.
8. Amounts paid during the years against each of the above dues, with dates of payment and serial number of the rent-receipt granted.
9. Amounts remaining due at the end of the year.
10. Date of the statement of account.
11. Signature of landlord or his authorized agent.

SCHEDULE III.

LIMITATION.

(See section 184.)

PART I.—*Suits.*

Description of suit.	Period of limitation.	Time from which period begins to run.
1. To eject any tenure-holder, *raiyat* or under-*raiyat* on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year . . .	The date of the breach.
1.(a) To eject a non-occupancy-*raiyat* on the ground of the expiration of the term of his lease.	Six months . .	The expiration of the term.
2. For the recovery of an arrear of rent in a suit brought by— (*i*) a sole landlord. (*ii*) the entire body of landlords, or (*iii*) one or more co-sharer landlords—		
(*a*) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same tenure or holding.	Six months . .	The date of the service of notice of the deposit or presentation of the postal money-order, as the case may be.
(*b*) in other cases .	Three years . .	The last day of the agricultural year in which the arrears fell due.
3. To recover possession of land claimed by the plaintiff as a *raiyat* or an under-*raiyat*.	Two years . .	The date of dispossession.

PART II.—*Appeals.*

Description of appeal.	Period of limitation.	Time from which period begins to run.
4. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days . .	The date of the decree or order appealed against.
5. From any order of a Collector under this Act, to the Commissioner.	Thirty days . .	The date of the order appealed against.

PART III.—*Applications.*

Description of application.	Period of limitation.	Time from which period begins to run.
6. For the execution of a decree or order made in a suit between landlord and tenant to whom the provisions of this Act are applicable, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1908 (IX of 1908): Provided that, where a sale in execution for arrears of rent is set aside on application, the proceedings in execution shall continue and the time between the date of such sale and the date of the order setting it aside shall be excluded from the period of limitation provided by this Article.	Three years . .	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been review of judgment, the date of the decision passed on the review.

Sch. III.—Dispossession by an order of Court under sec. 145, C. P. C. is not dispossession by landlord.—12 Pat. 261.

Sch. III applies to suits for *putni* rents.—35 C.W.N. 833.

No application of the Article where no dispossession by landlord. 34 C.W.N. 358; 57 C.L.J. 549.

Art. 3 is not applicable where dispossession is by landlord as an auction purchaser in execution of a decree against tenant.—9 Pat. 788 (F.B.).

Art. 3 was held inapplicable where a suit was for declaration that the decree in execution of which property was sold and possession delivered was not a rent decree but only a money decree and that property was not liable to be sold—A.I.R. 1930 Cal. 479.

Entry by some co-sharer landlords where tenant has discontinued possession is not such dispossession as will attract the operation of Art. 3.—51 C.L.J. 36.

When one party is on the land and the landlord settled the same with another party by taking *kabuliyat* from him and the latter thereafter dispossess the party on dispossession by the landlord. Such dispossession of the heirs of a decease under-raiyat by settling the land with a third person is dispossession not merely of those heirs who are trespassers but also of the raiyat and Art. 3, Sch. III would apply to ejectment suit.—38 C.W.N. 61.

Art. 3 applies to suit by reversioner for recovery of land surrendered by widow to landlord and settled by latter with third party.—38 C.W.N. 39.

Sch. III, Art. 3—Rules of special limitation applies when dispossession is by landlord as auction-purchaser and through Court.—40 C.W.N. 173.